

UNITED STATES DISTRICT COURT  
(DISTRICT OF MASSACHUSETTS)

CIVIL ACTION NO. 05-11697 GAO

MARILYN KUNELIUS,	)
Plaintiff,	)
	)
V.	)
	)
TOWN OF STOW separately, A	)
PARTNERSHIP OF UNKNOWN NAME	)
BETWEEN TOWN OF STOW and THE	)
TRUST FOR PUBLIC LAND, THE	)
TRUST FOR PUBLIC LAND separately	)
and CRAIG A. MACDONNELL, in his	)
individual capacity,	)
Defendants.	)
	)

**MEMORANDUM IN OPPOSITION TO DEFENDANT, THE TRUST OF PUBLIC  
LAND'S MOTION TO QUASH AND IN SUPPPORT OF THE PLAINTIFF'S  
MOTION FOR SANCTIONS**

NOW COMES the Plaintiff with this Memorandum in Opposition to Defendant, The Trust For Public Land's ("TPL") Motion to Quash and In Support of the Plaintiff's Motion For Sanctions. As a result of recent discovery, the Plaintiff believes that TPL's Motion to Quash has been filed in bad faith and further that all Defendants have filed documents with this Court that were, at minimum, misleading and intended to convince the Court and the Plaintiff into believing that TPL could not raise funds necessary to purchase the Plaintiff's property. The Plaintiff respectfully suggests that the Court's review of the following discovery will be sufficient for the Court to conclude that the Motion to Quash should be denied and all Defendants should be sanctioned for participating in nothing less than an attempt to withhold the truth from the Court and Plaintiff.

### Defendants' Misstatements to the Court

A fundamental component of the Plaintiff's case has involved the Plaintiff's assertion that TPL and the other Defendants (Town of Stow ("Stow"), Partnership of unknown name between the Town of Stow and the Trust of Public Land, TPL, and Craig MacDonnell ("MacDonnell")) deliberately lied to the Plaintiff when TPL defaulted on its obligation to purchase the property from the Plaintiff ("Plaintiff's Property"), as required under the provisions of Massachusetts General Laws Chapter 61A. This deliberate lie has involved the Defendants' joint statement that TPL "could not raise the money necessary to purchase the property from Mrs. Kunelius." As the Court is aware, all of the Defendants have jointly filed a Motion to Dismiss which states:

"However, after paying thousand of dollars for deposits required under Agreement, TPL found itself **unable** to raise the money necessary to fund the project and was **unable** to complete its purchase of the Property." [emphasis supplied].

(See Defendants' Motion to Dismiss, pages 1 and 2).

"When TPL was ultimately **unable** to raise the money to fund the purchase, it was **unable** to acquire the Property and forfeited thousands of dollars to Kunelius pursuant to the liquidated damage clause." [emphasis supplied].

(See Defendants' Memorandum of Law in Support of Motion to Dismiss of the Defendants, pages 1 and 2).

"Ultimately, however, TPL was **unable** to raise the funds necessary to purchase the Property by the closing date of September 26, 2003. *Id.* As TPL publicly expressed, its efforts to raise the funds were hindered by a declining economy, a difficult market for philanthropy, and the unexpected denial of a needed state grant." [emphasis supplied].

(See Defendants' Memorandum of Law in Support of Motion to Dismiss of the Defendants, page 6). The above statements are hereinafter referred to as the "Inability to Purchase Defense."

It must be noted that the Inability to Purchase Defense has been made **jointly by all Defendants since they filed Joint Motions and Memoranda**. The above statements are

unequivocal. However, recent discovery has shockingly revealed that all Defendants were and are aware that the above statements to the Court and the Plaintiff were entirely and completely false as to every component of those statements.

During discovery, the Plaintiff uncovered an application from the Defendants to the Commonwealth of Massachusetts for the express purposes of convincing the Commonwealth of Massachusetts Department of Housing Community Development (“DHCD”) to fund \$352,000.00 as a component of the money that the Defendants were obligated to pay the Plaintiff. This application, which is attached as Exhibit A, involves TPL, Stow, and MacDonnell directly. In the application, filed on March 30, 2003, the Defendants informed the Commonwealth of Massachusetts that, notwithstanding the \$352,000.00 sought from the Commonwealth, **TPL had a “fall back” plan because a \$6 million line of credit reserved for the purpose of acquisition of the Plaintiff’s Property.** The following are the specific statements made by the Defendants to the Commonwealth of Massachusetts revealing to the Commonwealth the fact that TPL did not even need the grant sought from the Commonwealth.

“TPL is prepared to purchase the Property. TPL has a primary plan and a fallback plan. The primary plan envisions a multilateral funding approach to this project. Some of the funding is contingent, as explained below, **but all of it is subject to a fallback Line of Credit from Wainwright Bank.** [emphasis supplied]

TPL’s primary plan is to generate the funds necessary for the closing as follows.

a. Town Funds: The Town’s contribution will be allocated from the pre-existing Community Preservation Fund (CPF) in Stow. CPF monies are derived from a property tax surcharge imposed on real estate. The fund currently has approximately [\$550,000] available for allocation to projects like this one. Any allocation requires a simple majority vote at Town Meeting on May 19, 2003. The Board of Selectmen and the Community Preservation Committee have voted to support this measure. This contribution will entitle the Town to the ownership of 45 acres of adjacent woodlands and wetlands for conservation and municipal water supply purposes.

b. 144 Red Acre Road: TPL will sell 144 Red Acre Road, an adjacent five-acre property containing a two-bedroom house, two barns and a small outbuilding to the Eye of the Storm Equine Rescue, Inc. (EOS), a non-profit corporation dedicated to the rehabilitation of sick and injured horses. EOS intends to utilize this property as its primary rehabilitation facility.

c. DHCD Funds: TPL intends to use the acquisition funds requested in this application at the closing of the purchase of the property from the current owner on September 25, 2003.

d. Private Fundraising: TPL has and will continue to pursue private-sector fundraising for this project. Currently, there are pledges in excess of \$200,000 available for this project (two \$100,000 pledges from other non-profit organizations, and the remainder in individual donations).

**As a fallback plan, if any or all of the above referenced sources of funds are unavailable, TPL intends to utilize capital from the private market. In this regard, TPL has available for its use a Line of Credit from Wainwright Bank in the amount of \$6,000,000, as evidenced by the letter attached as Exhibit \_\_\_\_\_. The use of this capital is subject to TPL's internal approval process, including customary due diligence and approval by the Board of Directors."** [emphasis supplied].

(See Exhibit A, bates stamp pages 342 and 343).

The above statements by the Defendants to the Commonwealth demonstrate the utter disregard of the truth in the statements made by the Defendants to this Court and the Plaintiff. For example, TPL was never "unable" to purchase the Plaintiff's Property despite its assertion to the contrary on 5 different occasions to this Court.<sup>1</sup>

As a result of the above quotes, it is absolutely clear that the Defendants and their counsel were aware of the expressed availability of the line of credit for the purchase of the Plaintiff's Property. TPL despite its assertions to the contrary was always "able" to purchase the Plaintiff's Property. This information, in light of the Defendants' Inability to Purchase Defense that TPL could not "raise" the money and was unable to purchase the Plaintiff's Property, is nothing short of a deliberate misrepresentation that was not only made to the Court but also to the Plaintiff at the time of default.

The Court may recall that at the time of the hearing on the Motion to Dismiss, the Defendants and their attorneys stood silently as the Plaintiff's counsel asserted and reasserted to this Court that the Defendants' Inability to Purchase Defense as reflected in their Motion

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<sup>1</sup> In addition, the above statement refers to a line of credit from Wainwright Bank evidenced by a letter presumably from that bank. However, Stow failed to provide that letter or any documents relative to Wainwright Bank.

was false and misleading. Simply as a matter of candor to the Court, the Defendants had an obligation to the Court to acknowledge that their statements were not truthful and accurate. This is particularly true since only the Defendants knew of the “line of credit” that was expressly available for the purchase of the Plaintiff’s Property. The Plaintiff, obviously, will leave to the Court the issue of whether the Court believes that the Defendants have attempted to mislead the Court by seeking the sympathy of the Court for the alleged “penniless non-profit TPL.” However, the Plaintiff suggests that any reading of the Defendants’ statements demonstrates multiple levels of deceit. Any individual that is told “I can’t raise the money and therefore I am unable to buy the property” will understand that the speaker cannot buy the property.

#### **The Defendants’ Attempt to Mislead Has Continued through Depositions**

The Plaintiff believes that the Defendants’ misrepresentations to the Court are consistent with their misrepresentations to the Plaintiff and with their ongoing and deliberate effort to avoid answering questions truthfully in the depositions. During the recent deposition of Craig MacDonnell on February 8, 2007, the Director of the Massachusetts office of TPL, Mr. MacDonnell was questioned about the Wainwright Bank letter of credit. Mr. MacDonnell, who is himself a member of the Massachusetts bar, was apparently surprised that the Plaintiff had discovered information concerning the \$6 million line of credit. When asked questions about the line of credit, Mr. MacDonnell feigned ignorance or lack of memory concerning virtually every question as to the availability of that line of credit, its status, whether it was in default, or how much money was available in the line. The Plaintiff respectfully suggests to this Court that his testimony was deliberately misleading and knowingly false. In reviewing the transcript testimony below, the Court should be aware that Mr. MacDonnell specifically testified that he reviewed the Stow and TPL application with the reference of the \$6 million line of credit before it was filed with the Commonwealth.

(See Exhibit B, page 206, line 5 through line 11). In addition, he testified that the application was prepared by TPL personnel including the Project Manager for the TPL's efforts regarding the Plaintiff's property. (See Exhibit B, page 104, line 17 through page 105, line 15).

Q. Were you aware that there was a line of credit at Wainwright Bank that was available as a fallback to the financing of this purchase from Mrs. Kunelius?

A. I am familiar that TPL has a line of credit with Wainwright Bank.

Q. Are you familiar that it was described as a fallback for the funding, as a contingency for the funding, of the purchase of Mrs. Kunelius' property?

A. Well, I see it written here, and it does remind me that there was some discussion about using Wainwright.

Q. And did you participate in the application for a line of credit to Wainwright Bank?

A. No.

Q. Who would have made application on behalf of TPL to Wainwright Bank?

MR. CONROY: Objection.

A. It's a standing line of credit. There's no application involved.

Q. Does TPL have a standing line of credit right now with Wainwright Bank?

A. Yes.

Q. What is the amount of that line of credit?

A. I don't know.

(See Exhibit B, page 108, line 13 through page 109, line 11).

Q. Is today the first time that you have become aware that there was a six million dollar line of credit available to TPL for the purchase of the property if, quote, any or all of the above-referenced sources listed on Page 343 and 342 were unavailable?

A. I was familiar with the Wainwright line of credit before today.

Q. And so you were aware that, should the funds that you sought from the town fail, TPL intended to use the line of credit. Is that fair to say?

MR. CONROY: Objection.

MS. FETOUH: Objection.

A. No, it's fair to say that TPL could use that line of credit if necessary and subject to due diligence and approval.

Q. But it doesn't say that. It says: TPL intends to utilize the capital from the private market. In this regard, it has available for its use a line of credit. Do you see that?

A. I do.

Q. Doesn't say could, might. It says intends to. Is that correct?

A. Well, the word in the document is intends.

...

Q. You're aware, are you not, in this litigation that TPL has made representations to the federal court that TPL did not have the money to purchase the property? Are you aware of that?

MR. CONROY: Objection.

A. As I sit here today?

Q. Yeah.

A. I am not sure I am aware of that.

Q. Did you review the documents filed on behalf of TPL in the current litigation?

A. On behalf of TPL or myself?

Q. Yes, on behalf of TPL.

A. I believe I saw them before they were filed, yes.  
Q. And did you review the documents that were filed on your behalf?  
A. I did.  
Q. And do you recall seeing statements to the federal court indicating that TPL did not have the money to purchase the property and that that's the reason that the property purchase did not go forward?  
A. Well, in fact, TPL did not have the money."

(See Exhibit B, page 110, line 24 through page 113, line 1).

"Q. Now, you were not unable to raise the money because you had a six million dollar line of credit, but you just decided not to use it. Isn't that reasonable to say?

MR. CONROY: Objection.

MS. FETOUH: Objection.

MS. ECKER: Objection.

A. The decision was made not to use the line of credit.  
Q. But that's not what you told the judge. What you told the judge was you were unable to raise it. Is there some sort of stop-payment or stop-borrowing order on your line of credit at Wainwright Bank? In other words, can you go in there right now, TPL, and borrow money on the line of credit, or is it in some way in default?  
A. I don't know.  
Q. You don't know if your own line of credit is in default, sir?  
A. Correct.  
Q. Do you have reason to believe that your line of credit is in default?  
A. I have no reason to believe.  
Q. So, as the director of the State of Massachusetts TPL, is it your testimony today under oath that you do not know whether your line of credit is in default or not.  
MR. CONROY: Objection.  
MS. FETOUH: Objection.  
A. I think I answered that question.  
Q. And the answer is you do not know whether it's in default or not.  
A. Correct.  
Q. Do you know if it's overdrawn or not?  
A. I don't.  
Q. Do you know if any money is withdrawn on that account?  
A. I don't.  
Q. Who would?  
MR. CONROY: Objection.  
A. Our finance manager.  
Q. And is the line of credit that's in Wainwright Bank, is that money that is earmarked for the Massachusetts branch of TPL?  
A. I think it's available for the region.  
Q. And so the region would be the New England region?  
A. Right.  
Q. Do you know who applied for that six million dollar line of credit?  
A. No."

(See Exhibit B, page 114, line 3 through page 116, line 1).

The Plaintiff respectfully suggests that the above testimony was intended to misrepresent and obfuscate the matter relating to the line of credit which had been specifically set aside for the purchase of the property. Again, the deponent, Mr. MacDonnell

was not only the Director of Massachusetts TPL, he is also an attorney and member of the Massachusetts bar.

The Plaintiff, having identified the serious misrepresentations referred to above and encountered the extraordinary bad faith answers of Mr. MacDonnell, has sought information directly from Wainwright Bank by way of subpoena in order to further demonstrate the scope of the Defendants' deliberate efforts to misrepresent. Common sense would dictate that information concerning the Wainwright Bank account is particularly important to the Plaintiff especially considering the issues of pre-textual and false justifications given by the Defendants. The Plaintiff respectfully suggests that the sudden lapse of memory by Mr. MacDonnell is a coordinated attempt of the Defendants to avoid the consequences of the information that will result from Subpoena of Wainwright Bank being made available to the Plaintiff.

#### **The Current Motion Demonstrates the Continuing Willingness to Mislead the Court**

There is no doubt that Mr. MacDonnell's feigning of ignorance during the deposition concerning the Wainwright Bank account, is reflective of his dismay that the Plaintiff "found out" about the \$6 million line of credit." Given the Inability to Purchase Defense made by the Defendants to this Court, there can be no greater evidence of the Defendants' ongoing attempts to mislead the Court than the actual language found on page 3 of TPL's Memorandum of Law in Support of the Motion to Quash the Subpoena in which the Defendants now deny that they ever made the Inability to Purchase Defense.

**"TPL has never argued and does not now argue that it failed to perform under the P&S because it could not have paid the purchase price from TPL's own funds or available credit, had TPL chosen to do so."** [emphasis added].

(See page 3 of the Defendants' Memorandum in Law).



This new denial of the Defendants' Inability to Purchase Defense has been made not only to the Court, but has been made on March 5, 2007 to the Plaintiff's counsel.

"TPL has never argued that TPL could not have resorted its own funds or available resources to complete the purchase of Mrs. Kunelius' Property."

(See March 5, 2007 letter of Dahlia S. Fetouh, attached hereto as Exhibit E).

The above quotes are as misleading as the Inability to Purchase Defense. No reasonable person could assign any credibility to the Defendants who, after being caught in a lie during the deposition, now deny that they made the untruthful statements to this Court in the first place. For example, if an attorney, having missed a hearing before this Court, told the Court that the reason he missed the hearing was "I was unable to attend" and the Court later found out that the attorney actually was in the Courthouse building but "elected" not to attend the hearing, then one could reasonably expect that this Court, at a minimum, would sanction the attorney for misleading the Court and for violation of ethical standards and Candor to the Court. It must be remembered that the misrepresentations are being made by an alleged non-profit organization TPL, and an attorney as well as the Town of Stow. These are organizations and/or individuals that claim special benefits, rights, and protections because of their acting for some greater good. In fact, the Defendants acted in such a predatory way as to be shockingly non-charitable. Equally misleading is the following statement that in TPL's Memorandum of Law in Support the Motion to Quash.

"TPL accepted the assignment of the Kunelius Agreement based upon projections that the purchase price could be raised from a variety of sources, including a contribution by the Town of Stow, a state grant from the Department of Housing and Community Development, private fundraising with the assistance of local conservation organizations, and limited development of a portion of the Property, as expressly permitted under Chapter 61."

(See page 3 of the Defendants' Memorandum in Law in Support of Motion to Quash the Subpoena). The above statement so fundamentally contradicts the Defendants to the Commonwealth of Massachusetts as to raise serious concerns about the veracity of the

Defendants before this Federal Court. The Plaintiff respectfully requests that the Court consider the precise language quoted directly from the application to the Commonwealth as seen on the beginning of page 3 of this Memorandum. The Defendants told the Commonwealth;

“As a fallback plan, if any or all of the above referenced sources of funds are unavailable, DHCD funding and private fund raising, TPL intends to utilize capital from the private market. In this regard, TPL has available for its use a Line of Credit from Wainwright Bank in the amount of \$6,000,000, as evidenced by the letter attached as Exhibit \_\_\_\_\_. The use of this capital is subject to TPL’s internal approval process, including customary due diligence and approval by the Board of Directors.” [emphasis supplied].

(See Exhibit A, bates stamp page 343).

The completely contradictory statements made to this Court and to the Commonwealth of Massachusetts demonstrate the difficult position the Defendants find themselves in, having decided to get on the “slippery slope of deception.” On one hand, the Defendants will have to admit that they misled the Court and the Plaintiff. On the other hand, the Defendants would have to admit that their statements to the Commonwealth were knowingly false. Obviously, the Defendants are faced with estoppel with regard to the statements made to the Commonwealth and they are faced with a misrepresentation issue with regard to the statements made to this Court.

The Plaintiff was able to secure from the Commonwealth of Massachusetts, Department of Housing Community and Development, a copy of two letters dealing with specifically the disclosure of the \$6 million line of credit referred to in the Application. Those two letters are attached hereto as Exhibits C and D. The first letter, Exhibit C, is an April 1, 2003 letter from MacDonnell to the Commonwealth specifically describing the line of credit to the Commonwealth. Exhibit C is signed by MacDonnell one day after the Application of Stow was signed and proves that MacDonnell had specific knowledge about the line of credit despite his testimony since he specifically attached a copy of a letter from

Wainwright Bank renewing “our line of credit.” (*See* Exhibit C). The fact that Exhibits C and D are mysteriously missing from the documents produced by Stow suggests that MacDonnell’s credibility is extremely low since it was MacDonnell himself who sent the Wainwright Bank letter to the Commonwealth.

If this is not shocking enough, the Plaintiff would ask the Court to consider that Exhibit C also has the following statement in it.

**“In order to complete this transaction, TPL may need to pursue private capital of its own, as we do in many of our transactions. Our private capital needs are met in a variety of ways, including foundations, private donations, and market funds. TPL currently has lines of credit across the country in excess of 70 MILLION DOLLARS. A local lending institution, Wainwright Bank, has issued us a line of credit in the amount of six million dollars, which funds we could utilize if necessary to complete the Stow transaction, subject to normal due diligence and internal TPL review.”** [emphasis supplied].

(*See* Exhibit C).

This is the first time that either the Court or the Plaintiff has learned how utterly bogus the Inability to Purchase Defense is, since there was \$70 million available to TPL. There can be little doubt as to why the Defendants elected not to provide the attached two Exhibits C and D to the Court or to the Plaintiff. There can be no doubt as to why the Defendants now seek to Quash the Subpoena and feign ignorance concerning the line of credit. Exhibits C and D retrieved from the Commonwealth by the Plaintiff, are more than just an embarrassment for the Defendants. These Exhibits provide overwhelming evidence of a deliberate effort to mislead and obfuscate by the Defendants.

Now that the Court and the Plaintiff are aware that there was over \$70 million available to TPL to make the purchase, the question remains why Stow, clearly aware of the \$70 million, did not question why TPL was not availing itself of these funds.<sup>2</sup> During the

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<sup>2</sup> The answer, which was not initially immediately apparent, is becoming very clear. TPL and Stow had a clear partnership as alleged in the Complaint. TPL was required to purchase the property under the Assignment of the Right of First Refusal and Stow was required to contribute \$400,000.00 for the purchase.

deposition of the former Chairman of the Board of Selectmen, Perry, testified that he never questioned TPL about the use of the line of credit. At the time of the deposition, the Plaintiff was only aware of the \$6 million line of credit. Obviously, since Perry signed the Application to Commonwealth he was aware of the \$70 million available to TPL. The fact that Exhibits C and D have been withheld from the Plaintiff by Stow is not coincidental. The fact that MacDonnell feigned ignorance concerning every aspect of the lines of credit, is similarly not coincidental.

During the deposition of MacDonnell, he specifically was asked about any correspondence between TPL and Wainwright Bank regarding the disclosure of the line of credit;

Q. Are you aware of any correspondence between TPL and Wainwright Bank regarding the disclosure of the line of credit to the state as a backup plan?

A. I am not.

(See Exhibit B, page 206, line 3 through 18).

What is very clear from Exhibit C is that MacDonnell absolutely was aware of the correspondence between TPL and Wainwright Bank since he specifically referred to that correspondence in his letter to the Commonwealth. (See Exhibit C). What is also clear is that MacDonnell suspected that the Plaintiff would not discover Exhibits C and D. Again, MacDonnell is a member of the Massachusetts bar.

A second and equally disturbing component of the Inability to Purchase Defense involves the Inability to Purchase Defense the statement that;

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Once TPL “elected” not to purchase the property, Stow quickly realized that it did not have to contribute the \$400,000.00. At that point there was no need to do anything because the original low income buyer had been driven off by the talks of TPL of millions of assets that original buyer would never return. Stow in fact got the benefit of not developing the property, which was its goal, without paying a penny. The Complaint alleges these facts and now discovery proves the same. Every aspect of the finances of TPL is fair game although not apparent, every part of TPL’s presentation to Stow and the Commonwealth relied on the financial strength and specific reference to not only Wainwright Bank but to what we now understand is \$70 million of available funds.

**“...after paying thousand of dollars for deposits required under Agreement, TPL found itself unable to raise the money necessary to fund the project and was unable to complete its purchase of the Property.”** [emphasis supplied].

(See Defendants’ Memorandum of Law in Support of Motion to Dismiss of the Defendants, page 2). It now appears certain, as a result of deposition testimony, that TPL never paid any of its own money to Mrs. Kunelius for earnest money payments that were required under the P&S Agreement. The Defendants knew that TPL had caused a neighborhood organization, the Friends of Red Acre, to raise the money that was given to the Plaintiff as earnest money payments. The following is the deposition testimony of Craig MacDonnell with regard to the source of the earnest money payment which is referred to in the Inability to Purchase Defense.

“Q. What were the funds that TPL, of the purchase price, now what funds which were to make up the purchase price were actually TPL’s own monies?

MR. CONROY: Objection

A. There were deposits made against the contract, the amount of which I’m not quite certain of, but those were TPL dollars.

Q. Well, in fact, weren’t those dollars that were donated to TPL from the Friends of Red Acre?

A. Some of them, I believe, were.

Q. Weren’t all of them, sir?

A. I don’t recall.

Q. Is it likely that they were? Do you have any recollection?

MR. CONROY: Objection

MS. FETOUH: Objection

A. My recollection is that we did ask for a donation from the Friends of Red Acre for some money up front. What I can’t remember is how much.

Q. So, you don’t remember how much of the earnest money that was paid to Mrs. Kunelius was actually TPL funds and how much had been raised by TPL through the Friends of Red Acre. That’s your testimony, correct?

MS. FETOUH: Objection

A. What I don’t remember is how much, how many of the dollars that were deposited with Mrs. Kunelius were dollars and how many were Friends of Red Acre dollars.

Q. And as you sit here today, you cannot say with any certainty that any of those monies that were – you used the word deposited. I used the word earnest money. You cannot say with any certainty that any of those dollars were TPL dollars. Isn’t that fair to say?

A. I do not know where they came from.”

(See Exhibit B, page 79, line 21 through page 81, line 7)

The former Chairman of the Board of Selectmen testified as follows;

“And, in fact, the funds that went to Mrs. Kunelius were entirely from the Friends of Red Acre. Isn’t that correct?

A. That doesn’t surprise me.

Q. But do you know that that’s in fact the case?

A. When you say entirely from the Friends of Red Acre, I don't know. I believe they came from the Friends for Red Acre. Whether it was a hundred percent or not, I can't comment.

Q. So, other than the money that was paid - knowing that, isn't it in fact true that TPL had not one penny of money into the purchase of the property, because one hundred percent of the \$15,000 received by Mrs. Kunelius came from donations of the Friends of Red Acre?

MS. FETOUH: Objection.

A. I just said I don't know that it was a hundred percent from the Friends. I understood that it came from them. I do not know whether it included some TPL funds or not."

(*See* Exhibit F which is an excerpt of the deposition of Perry, page 10, line 13 through page 11, line 8). The testimony of another member of the Board of Selectmen, Jones, also indicated that the source of thousands of dollars in payment was the neighborhood organization, not TPL. Finally, Jones testified on Monday, March 5, 2007, that he also understood that the payments made to the Plaintiff were not from TPL's funds.

This issue is not in and of itself of the greatest importance to the Plaintiff's case but it does demonstrate the lengths to which the Defendants will go to unfairly use their status as a non-profit in seeking the sympathy of the Court, through outright deception.

### **Discovery of Wainwright Bank Is Appropriate**

The Plaintiff respectfully asserts that the Subpoena of Wainwright Bank and the inquiry into the status of the \$6 million line of credit is appropriate and relevant because other discovery in this case strongly suggests that TPL has been fundamentally misleading the Plaintiff and the Court on virtually every aspect of their involvement in their acceptance of the Assignment of the Right of First Refusal. The Plaintiff asserts that TPL used its status and its representation of overwhelming financial solvency to permanently discourage the original buyer once TPL had exercised the right of first refusal. A member of the Board of Selectmen, Jones, testified that the assignment to TPL "killed" the original deal between the Plaintiff and the original buyer. The repeated statements concerning TPL's financial credit worthiness, on one hand has been listed by the Board of Selectmen as justification for the Assignment. On the other hand, former Chairman of the Board of Selectmen, Perry, has

testified being informed that TPL “ was unable to purchase the Property” that the Board of Selectmen never questioned TPL as to why it did not use the \$6 million line of credit. It was not as if the Board of Selectmen did not know about the \$6 million line of credit or the 70 million dollars because the application to the Commonwealth was signed and reviewed by the Board of Selectmen. It is inconceivable that the Board of Selectmen would not have insisted on TPL using the \$6 million line of credit. Nevertheless, that is exactly what happened. The Complaint alleges that Stow and TPL worked together to defeat the P&S Agreement between the Plaintiff and the original buyer. Factors relating to the existence of the line of credit, how much money was available, etc. are relevant to demonstrating the deliberate collusion between Stow and TPL, the veracity of their statements made to the Court, Mrs. Kunelius, and to the Commonwealth. The Complaint contains a Civil Rights Count as well as Counts for Unfair and Deceptive Trade Practices, Intentional Interference with Contractual Relationship, and Fraud and Misrepresentation. Paragraph 20 of the Complaint asserts that Mrs. Kunelius was assured by Mr. MacDonnell and TPL that the acquisition of her property by TPL was a certainty (and by implication, therefore, she did not need to worry about the loss of the original buyer). (*See* paragraph 20 of the Complaint). Presumably since MacDonnell was telling the Commonwealth of Massachusetts that the purchase was also a certainty because of their intention to use the \$6 million line of credit, there is every reason to believe that Mrs. Kunelius’ assertion in this regard is extremely credible.

#### **Defendants Elected to Try to Use This Court for A Bogus Motion to Certify**

In addition, it now appears that TPL and the Town of Stow were involved in another attempt to mislead the Court as to the Inability to Purchase Defense particularly in their Motion to Certify a Question to the SJC. In that Motion, the Defendants asserted repeatedly that;

“It is rare that the town or non-profit has funds appropriated for a purpose prior to the conclusion of the 120-day notice period.”

(See Paragraph 10 of the Defendants’ Motion to Certify Question to The Supreme Judicial Court).

“In practice much of the hundred twenty day option period [the period between the Notice of the P&S Agreement and the time the Town must exercise the Right of First Refusal] is consumed by the town’s deliberations, leaving non-profits with very little time in which to assess the preservation value, determine the risks and benefits, assess the fund raising possibilities, and coordinate with local interest groups before they are forced to decide whether to exercise the Right of First Refusal.

(See Paragraph 11, page 6, of the Defendants’ Motion to Certify Question to The Supreme Judicial Court). In fact, the above statements by all Defendants in their Motion to Certify are directly related to the Wainwright Bank Subpoena. Certainly, the existence of the Wainwright Bank line of credit and the \$70 million, which had been hidden from the Court and the Plaintiff have made the above two statements obviously contradictory. Nevertheless, the Defendants, in an attempt to gain the sympathy the Court, used the supposed lack of time to raise funds as a justification for this Court to certify to the Supreme Judicial Court. At a minimum, the Plaintiff believes that this is a complete failure of Defendants’ obligation of Candor to the Court since the Motion to Certify, in reality could not be even remotely based upon “the possibility of not having money” since the Defendants had already told the Commonwealth that they had the \$6 million line of credit and the \$70 million for the purchase and in their current Motion states that they never claimed that they did not have the money to purchase the property. That being said, they were certainly willing to ask this Court to ask the SJC to Certify a Question which, was based upon misinformation at best and misrepresentation at worst.

### **Relevance of Financial Data**

The existence of the line of credit and the facts and circumstances surrounding its status are also relevant to the testimony of former Chairman of the Board of Selectmen,



Perry. On Monday, February 26, 2007 Perry testified during his deposition that although he was aware of the above language concerning the fallback plan of using the \$6 million line of credit, he never bothered to ask TPL or Craig MacDonnell why they were defaulting on the P&S Agreement when Perry had signed the application with the Commonwealth indicating that the line of credit will be used if the other funds were not raised.<sup>3</sup> The Plaintiff asks the Court to remember that the Counts of Fraud and Misrepresentation are against both the Town and TPL. It is virtually inconceivable that the Town, having assigned the Right of First Refusal to TPL with full knowledge of the line of credit, would not insist upon the use of that line of credit in order for TPL to meet its obligations under the assignment. The Town had already been warned one day before the assignment, by Town Counsel, that litigation would certainly ensue if TPL defaulted on the purchase. Attached as Exhibit G is a letter of Stow's former counsel to Stow strongly warning against the Assignment and warning Stow that litigation would be very likely as a result of the Assignment. The Plaintiff respectfully suggests that a complete reading of Exhibit G would demonstrate to the Court that the Plaintiff's assertions with regard to virtually every component of her claim have substantial justification. In addition Exhibit G states that;

“Since the language of Chapter 61 does not absolve the Town of any further liability to the land owner for failure of the assignee to carry out the obligations to purchase the land under the assignment, or for any other claims as may be made by the land owner (such as exists in the present circumstances and are discussed below), appropriate terms and conditions of the assignment would include an indemnification agreement by the assignee (TPL) to the assignor (the Town) from any such claims as might be made by the land owner resulting from the assignment...”

(See Exhibit G). The above quote demonstrates that Stow had been advised that it would be exposed if TPL did not go forward. Notwithstanding this advice from Stow's counsel to the Board of Selectmen “elected” not to inquire as to why TPL was not availing itself of the \$70

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<sup>3</sup> Mr. Perry's transcript is not yet available. The portion of the transcript will be provided to the Court as soon as the transcript is available.

million dollars. They never asked TPL why it did not use the \$6 million line of credit, because Stow and TPL achieved their goal, i.e. defeat the P&S Agreement and spend nothing.

### Conclusion

The behavior of the Defendants in this case, given their individual status as a municipality, a non-profit conservation group, and an attorney, is frankly outrageous. Misdirection and outright lying have been the hallmark of their behavior. Had the Defendants not inadvertently provided the application to the Commonwealth, then the Plaintiff would have never known about the Wainwright Bank and the \$70 million line of credit. The efforts to mislead are outrageous.

If the line of credit was not earmarked for the project, or if it did not exist, or if it was in default, or if it was never intended to be used, then each of these possibilities are relevant to the remaining Counts. If the line of credit was in place and was not in default, then the facts and circumstances surrounding its status remain relevant and material given the outright lie by TPL and MacDonnell that TPL couldn't raise the funds and therefore had to default. The existence of the line of credit is also relevant to the Fraud and Misrepresentation Counts because if MacDonnell's current testimony is to be believed, i.e. that the inability to raise the funds and the loss of state grants was critical to the purchase then under what circumstance could the Defendants assert to the Commonwealth the exact opposite. The Defendant should be sanctioned and produce the documents and testimony sought by the Plaintiff.

The Plaintiff alleged in paragraph 46 of the Complaint the following;

“In the Spring of 2004, MacDonnell met with Kunelius, Kunelius' counsel and Jim Boothroyd, a local real estate broker, David Norris, in connection with TPL's demands for a lower purchase price. **During that meeting MacDonnell threatened and intimidated Kunelius and her counsel by stating generally that (i) TPL had “serious and influential connections by way of its Board of Advisors” who would defend TPL against any legal action brought by Kunelius as a result of**

**TPL's default, (ii) TPL's Board of Advisors included prominent law firms that would tie up Kunelius and any attempt by her to enforce the P&S, (iii) TPL would notify the Court of its "influential connections beyond reproach" and that the Court would never find in favor of Kunelius notwithstanding that TPL was demanding a reduction in purchase price of \$400,000, (iv) TPL was aware that Kunelius was of very limited means and that she and her attorney would not be able to spend sufficient funds to win any matter against TPL and (v) TPL had unlimited resources available to it to overwhelm anyone who would make the mistake of opposing TPL."** [emphasis supplied].

(*See* paragraph 46 of the Complaint). Based upon current behavior of the Defendants it appears clear that the Defendants are following through on MacDonnell's threats.

Respectfully submitted,

Marilyn Kunelius,

By her Attorney

Dated: March 7, 2007

By: /s/ Michael C. McLaughlin, Esq.  
Michael C. McLaughlin BBO# 337350  
Law Offices of Michael C. McLaughlin  
One Beacon Street, 33<sup>rd</sup> Floor  
Boston, MA 02108  
617-227-2275  
michaelcmclaughlin@speakeasy.net

#### **Certificate of Service**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on March 7, 2007.

/s/ Michael C. McLaughlin, Esq.  
Michael C. McLaughlin BBO# 337350  
Law Offices of Michael C. McLaughlin  
One Beacon Street, 33<sup>rd</sup> Floor  
Boston, MA 02108  
617-227-2275  
michaelcmclaughlin@speakeasy.net

3COM

Ross Perry/US/3Com

03/30/2003 10:35 AM

Sent by: Ross Perry - Product Management, BNC/LID/ Interconnect

To:

cc:

Subject: Kunelius Farm

Bill:

I left at your door the DHCD grant application that TPL has filled out.

After a review of the application, it appears to be reasonable and I have signed in multiple locations as indicated by the yellow post-it notes.

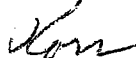
There is one requirement that should be reviewed before further signatures. This is the requirement that the town hire a grant manager to oversee the expenditure of these funds. The grant application includes funds (up to \$32K) to cover this obligation. Since this is cost neutral, does this requirement impact our FY 04 budgeting or Town Meeting process?

I believe TPL needs to have this application completed and submitted by April 1. So there isn't much time. Its your call whether this application should be reviewed by Jake.

Let Craig MacDonnell and me know if there are questions.

If there is a need to deliver this to Jake for a quick review, I'm sure someone from the Friends of Red Acre will agree to run the courier service. They probably will also pick it the signed copies when it is ready.

Thanks,



Ross

Craig can be reached at 617-367-6200

KUN336

**HOUSING DEVELOPMENT SUPPORT PROGRAM**  
**MASSACHUSETTS COMMUNITY DEVELOPMENT BLOCK GRANT**

**APPLICATION COVER SHEET**  
**(Form 1-1)**

**APPLICANT**

Community: Town of Stow

Address: 380 Great Road  
Stow, MA 01775-2127

Contact Person: (Name) Edward R. Perry  
 (Title) Chairman, Stow Board of Selectmen

Address: 380 Great Road, Stow, MA 01775-2127

Phone: 978-897-4514

Fax: 978-897-4534 E-Mail: Ross\_Perry@3com.com

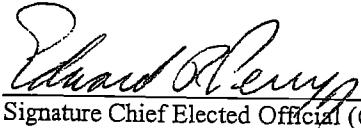
**PROPOSED PROJECT**

Project Name: Kunelius Farm

Use of Funds (indicate amount for each category applied for)

Acquisition	\$ <u>320,000</u>	<b>Executive Order 418 Certification:</b> Included with application Date Certified <input type="checkbox"/> Awaiting Certification <input checked="" type="checkbox"/> Request attached <input type="checkbox"/>
Demolition	\$ <u>          </u>	
Relocation	\$ <u>          </u>	
Housing Rehabilitation	\$ <u>          </u>	
New Construction	\$ <u>          </u>	
Infrastructure Improvements	\$ <u>          </u>	
Other:	\$ <u>          </u>	
Administrative Costs	\$ <u>32,000</u>	
Total HDSP Grant Request:	\$ <u>352,000</u>	

**AUTHORIZATION**

  
 Signature Chief Elected Official (CEO)

3/30/03  
 Date

Edward R. Perry  
 Name of Chief Elected Official

Chairman, Board of Selectmen  
 Title

978-897-4514  
 Phone Number of CEO

To the best of my knowledge, information in this application is true and correct.

KUN337

**HOUSING DEVELOPMENT SUPPORT PROGRAM****MASSACHUSETTS COMMUNITY DEVELOPMENT BLOCK GRANT****APPLICATION COVER SHEET****(Form 1-1)****APPLICANT**Community: Town of StowAddress: 380 Great RoadStow, MA 01775-2127Contact Person: (Name) Edward R. Perry(Title) Chairman, Stow Board of SelectmenAddress: 380 Great Road, Stow, MA 01775-2127Phone: 978-897-4514Fax: 978-897-4534 E-Mail: Ross\_Perry@3com.com**PROPOSED PROJECT**Project Name: Kunelius Farm

Use of Funds (indicate amount for each category applied for)

Acquisition	\$320,000
Demolition	\$
Relocation	\$
Housing Rehabilitation	\$
New Construction	\$
Infrastructure Improvements	\$
Other:	\$
Administrative Costs	\$32,000

Total HDSP Grant Request: \$352,000**Executive Order 418 Certification:**

Included with application

Date Certified ☐Awaiting Certification ☒Request attached ☐**AUTHORIZATION**Edward R. Perry

Name of Chief Elected Official

\_\_\_\_\_  
Signature Chief Elected Official (CEO)Chairman, Board of Selectmen

Title

\_\_\_\_\_  
Date978-897-4514

Phone Number of CEO

To the best of my knowledge, information in this application is true and correct.

**KUN338**

## Item 1-2: Community Development Strategy

In 1996, The Town of Stow published *Stow 2000, A Master Plan*. This 359-page document was adopted by the Planning Board and presents a comprehensive report on the characteristics of the town; the needs and challenges that face the community; and a strategy of implementation to address these issues. Its contents were developed in a community planning process by the Stow 2000 Committee, whose planning analyses included a survey sent to all town households that had a 33% response rate. It was further refined with public input at many meetings including public forums in 1994 and 1995. A final draft was released for public comment before the document was published. This CDS summary relies on the content of the *Stow 2000: A Master Plan* to describe the town's community development strategy and how this project is consistent with the needs and goals of the Town of Stow.

### **Background:**

Stow, a 17.62 square mile community of 5,902 residents (Census 2000) has a land use that is 63% residential. There are two developments constructed under comprehensive permits for senior citizens (50 units) and diverse income rental units (12 of 60 are restricted for renters of low and moderate income). "The balance of Stow's housing is primarily frontage lots along existing roadways and a few smaller subdivisions."

Stow recognizes that housing prices within the town are "...beyond the reach of first time home buyers." At the time of the report, the median price of a single-family home was in excess of \$250,000. According to the report, "less than 10% of the houses in Stow are sold for under \$150,000. New construction houses are now selling for an average price of \$300,000." Median single-family home sales for the month of September 2002 (the most recent month available) were in excess of \$450,000. The continuing strong real estate market has reinforced the need for affordable single-family units in Stow.

Stow has become a community that is affordable only to buyers with higher incomes. Residents that are adversely affected by this limited opportunity for purchasing homes include "...first time home buyers, service employees, and the elderly who earn low and moderate incomes." Providing housing opportunities for these residents is listed as Goal number 4.10.1 in the report: Provide housing opportunities for those at the entry level of homeownership, "empty-nesters, elder residents, and those requiring housing assistance and rental housing units."

The comprehensive permit developments mentioned above, along with a housing development that contains deed restricted affordable housing, have added to an affordable housing stock within the town that has exceeded 7%. "The sales or rental price is based on the Boston Primary Statistical Area median income and is defined by the Commonwealth. These dwelling units are deed restricted to require resale or rental only to qualified buyers under the State program."

### 142 Red Acre Road

The CDS outlines strategic goals that include higher density development in the village areas of the town; residential condominiums; elderly housing; and the conversion of existing "...affordable housing stock into non-profit or residential ownership models that protect affordability on a permanent basis (Priority: high)".

The purchase and sale of 142 Red Acre Road as deed restricted as affordable in perpetuity will capture an existing house in Stow and provide an opportunity for someone with an income between 65% and 80% of

the Boston Primary Statistical Area median income with a 2-3 bedroom home on .93 acres in an attractive, wooded neighborhood of single family homes.

Regardless of what the Town does to expand its housing stock, it is important to preserve the variety of housing that it already has.

This goal is reiterated in the passing of the Planned Conservation Development amendment to the Zoning Bylaw at the 1995 Annual Town Meeting. One of the intents of this amendment was to encourage "...a greater mixture of housing types..."

Under the "Objectives and Action Items" section of Stow 2000: A Master Plan are two action items that this project addresses:

2. Protect existing subsidized rental units... and where possible, move the affordable housing stock into nonprofit or resident ownership models that protect affordability on a permanent basis. (Priority: high)
3. Revitalize the Stow Housing Partnership in order to provide housing for the empty nesters, young families, and low and moderate-income residents in our community. (Priority: high).

The unique characteristic of this project is that it fits neither of the usual models for affordable housing development. It is neither a Town-initiated project, nor is it a Town partnership with a traditional for-profit developer. The project is a unique partnership between the Town and a national non-profit organization, which will provide the following benefits:

1. A model for encouraging the capture of suitable housing throughout the Stow community that can be offered for sale as deed restricted affordable in perpetuity. Many of the underserved residents of Stow would benefit from having the opportunity to live in and own a single-family detached residence in an economically diverse neighborhood.
2. A model for bringing federal dollars to bear in Stow's continuing effort to increase affordable housing stocks. Experience gained from the preparation of this application provides the town a foundation for future affordable housing funding efforts.

In summary, this project allows for the capture, conversion and sale of existing housing stock to deed restricted affordable in perpetuity. The project meets many of the goals and objectives defined by the town in its master planning process, and has the added benefit of public-private partnership to reduce the burden on Town staff. In this partnership, The Trust for Public Land is fulfilling its mission, which is to work with communities on land projects that fulfill town goals and objectives. The Trust for Public Land is pleased and excited to have the opportunity to work with the Town of Stow and with the Massachusetts DHCD to convert an existing home into affordable housing stock to further benefit the community.

Reference: Stow 2000, A Master Plan, (May 1996), pps 21, 22, 78-82, 175-186.



Item 1-3: Project Description and One-Stop

<b>Project Summary</b>	
Project Scope	Acquisition and rehabilitation
Number/Type of Unit	1 two-bedroom, single family ownership unit
Developer Identity	The Trust for Public Land
Housing Type and Proposed Clientele	Single family residential, affordable to persons earning 65% - 80% of Median Income
Affordability Terms	Unit will be sold for \$199,000, and will be affordable to families earning XXXX

The Kunelius Farm is located at 142/144 Red Acre Road and Tuttle Lane between Red Acre Woods Conservation Land and Captain Sargent Conservation Land. The property consists of 50 acres that includes approximately 8 acres of uplands, wooded wetlands, a scenic pond, a vernal pool, two houses, a barn, a paddock, a riding ring, and pasture. One house, the residence at 142 Red Acre Road, is the subject of this application.

The project calls for approximately 45 acres to be acquired by the Town of Stow for the purpose of conservation and for a potential future water supply. The two houses will be owned privately, but will be deeded "affordable" to moderate-income families in perpetuity. The project developer expects that the Eye of the Storm, a local equine rescue facility, will occupy the existing horse facilities and the house at 144 Red Acre Road, and continue to shelter and care for injured and frail horses. Upon sale of the house, affordability restrictions will be attached and conveyance will be subject to the town-directed lottery system.

The entire 50-acre parcel is now under contract for a price of \$1,116,900, plus interest on a retained mortgage. Because the property is subject to Chapter 61A, the Town had a right of first refusal to purchase the land instead of the developer. After a public hearing, the Town assigned this right to the Trust for Public Land.

The Town of Stow will be voting at Town Meeting to spend \$300,000 for the purchase of the 45-acre conservation and aquifer protection parcel and \$100,000 to purchase the affordability restrictions on the two houses.

The cost of these acquisitions will be borne by the Community Preservation Fund, which will pay the principal and interest on the bonds that will be sold to generate the funds for this town investment.

Acquisition of the Kunelius Farm by the Town will provide a critical link between the Red Acre woodland and the Captain Sargent conservation area that extends across Tuttle Lane and South Acton Road. Limiting development on this parcel to the existing residential and horse-related uses also will preserve the integrity of the Town's investment in surrounding open space. In addition, public ownership will result in increased opportunities for trail connections, preserve the existing wildlife corridor, and provide greater public access to previously protected open space.

Protecting the Kunelius Farm will also preserve an important water resource. Portions of the Kunelius Farm sit above one the most valuable and productive aquifers in town. It would be an important safeguard for Stow to have ownership rights in this valuable resource. The proposed conservation project would ensure that this resource will be protected and not be utilized primarily by the multi-unit development being proposed for the property.

Perhaps the most important aspect of this project is that it will add two units to Stow's very limited inventory of affordable housing. Based on discussions with the Community Preservation Committee (CPC), it appears likely that CPC will spend \$100,000 to purchase affordability restrictions on the two houses on the property. Adding these two units of affordable housing would help maintain Stow as a diverse and affordable community, one of the major objectives of CPA.

The unique opportunity presented by this project to rehabilitate at-risk affordable single-family housing is one that is consistent with Stow's Community Development Strategy (see Item 1-2). Along with 45 acres of conservation land, the project will ultimately deliver two units of high-quality housing that is affordable to moderate-income families. These units are located in a highly desirable neighborhood within a short distance to shopping, schools, public services, and recreational opportunities.

### Project Schedule

- May 19: Town meeting vote to determine use of CPA funds
- June - September: Federal grants and private development funds sought for acquisition and renovation of the structures.
- September 26: Formal acquisition of the property by the Trust for Public Land. 45 acres conservation parcel deeded to Town. Conservation and affordability restrictions imposed on private parcels.

### 1. Financing Mechanism:

The total acquisition costs, including the conservation land, the horse property, and the residence at 142 Red Acre Road are nearly \$1.2 million, including interest due the owner under the purchase and sale agreement. HDSP funds will be specifically used for acquisition of the property at 142.

TPL is prepared to purchase the Property. TPL has a primary plan and a fallback plan. The primary plan envisions a multilateral funding approach to this project. Some of the funding is contingent, as explained below, but all of it is subject to a fallback Line of Credit from Wainwright Bank.

TPL's primary plan is to generate the funds necessary for the closing as follows.

<b>Primary Plan</b>	
Town of Stow contribution	\$300,000
Sale of 144 Red Acre Road	\$400,000
DHCD funding	\$250,000
Private fundraising	\$200,000
<b>TOTAL</b>	<b>\$1,150,000</b>

- a. Town Funds: The Town's contribution will be allocated from the pre-existing Community Preservation Fund (CPF) in Stow. CPF monies are derived from a property tax surcharge imposed on real estate. The fund currently has approximately [\$550,000] available for allocation to projects like this one. Any allocation requires a simple

majority vote at Town Meeting on May 19, 2003. The Board of Selectmen and the Community Preservation Committee have voted to support this measure. This contribution will entitle the Town to the ownership of 45 acres of adjacent woodlands and wetlands for conservation and municipal water supply purposes.

- b. 144 Red Acre Road: TPL will sell 144 Red Acre Road, an adjacent five-acre property containing a two-bedroom house, two barns and a small outbuilding to the Eye of the Storm Equine Rescue, Inc. (EOS), a non-profit corporation dedicated to the rehabilitation of sick and injured horses. EOS intends to utilize this property as its primary rehabilitation facility.
- c. DHCD Funds: TPL intends to use the acquisition funds requested in this application at the closing of the purchase of the property from the current owner on September 26, 2003.
- d. Private Fundraising: TPL has and will continue to pursue private-sector fundraising for this project. Currently, there are pledges in excess of \$200,000 available for this project (two \$100,000 pledges from other non-profit organizations, and the remainder in individual donations).

As a fallback plan, if any or all of the above-referenced sources of funds are unavailable, TPL intends to utilize capital from the private market. In this regard, TPL has available for its use a Line of Credit from Wainwright Bank in the amount of \$6,000,000, as evidenced by the letter attached as Exhibit \_\_\_. The use of this capital is subject to TPL's internal approval process, including customary due diligence and approval by the board of directors.

## 2. Contingency Plan for Cost Overruns

As part of the larger Kunelius Farm project, the Trust for Public Land has organized a significant private fundraising campaign. This campaign, in conjunction with Stow CPA funds, the sale of the unit, and HDSP funds, has sufficient capacity to, if necessary, cover cost overruns.

In addition, the Trust for Public Land has received confirmation that its \$6,000,000 line of credit has been renewed by Wainwright Bank, and these funds would be available to cover cost overruns, subject to TPL's normal due diligence and internal review.

## 3. Construction Estimates and Procurement Process

Based upon an appraisal performed by Prospectus, Inc. (see Exhibit 6), the acquisition cost of the land, a .93-acre parcel, and the 1,066 square foot residence will be \$320,000. Given the scarcity of frontage land in Stow, and the current housing market, this price is appropriate.

Estimates for housing rehabilitation were provided by Integrity Builders and Remodelers, Inc., from Acton, MA. Renovation estimates provided by Dana McKiel of Integrity to bring the structure up to appropriate conditions and current building code total approximately \$126,000. The work is estimated to take between four and six months to complete given the extensive work required on the roof. In addition to the roof, windows, exterior doors, side and rear decks, and kitchen cabinets need replacing.

Infrastructure improvements to the property include the septic repairs necessary to achieve full Title V Certification. ABC Cesspool Co. Inc. completed a Title V inspection on March 20, 2003, and granted a conditional certification. Cost for the repairs are estimated at \$1,200.

KUN343

The Town of Stow will circulate, according to procedures described in *Municipal, County, District, and Local Authority Procurement of Supplies, Services, and Real Property*, a request for bids for the management, administration, and oversight of this grant. A grant management consultant will be chosen by the Town (with advice and guidance for suitability from DHCD prior to the commencement of the contract between the town and the consultant).

# Section 1

## PROJECT DESCRIPTION

Name and Address of Project			
1 . Project Name:	Kunelius Farm		
1a . Application Completed By:	Christopher LaPointe, TPL, Rodger Brown, R. Broen and Associates		
1b . Original Application Date:	April 1, 2003	Application Revision Date: <span style="border: 1px solid black; display: inline-block; width: 100px; height: 1.2em; vertical-align: middle;"></span>	
2 . Project Address:	142 Red Acre Road		
3 . Neighborhood	<span style="border: 1px solid black; display: inline-block; width: 100%; height: 1.2em; vertical-align: middle;"></span>		
4 . City/ Town	Stow	MA	01775
	<small>(state)</small>	<small>(zip code)</small>	
5 . County	MIDDLESEX		
6 . <input type="checkbox"/> Scattered sites			
7 . Is this a qualified census tract?	No	Enter a census tract <span style="border: 1px solid black; display: inline-block; width: 80px; height: 1.2em; vertical-align: middle;"></span>	
8 . Difficult to develop area	<span style="border: 1px solid black; display: inline-block; width: 80px; height: 1.2em; vertical-align: middle;"></span>	QCT information last updated on: <span style="border: 1px solid black; display: inline-block; width: 80px; height: 1.2em; vertical-align: middle; text-align: center;">3/20/03</span>	
Development Plan			
9 . Development Type (Please check all that apply.)			
<input type="checkbox"/> No	New construction		
<input type="checkbox"/> Yes	Acquisition, substantial rehab of existing housing		
<input type="checkbox"/> No	Acquisition, moderate rehab of existing housing		
<input type="checkbox"/> No	Acquisition, minimal or no rehab of existing housing		
<input type="checkbox"/> No	Adaptive re-use of non-residential structure		
10 . Proposed Housing Type	Home Ownership		
11 . Project Description:	Number of buildings: <span style="border: 1px solid black; display: inline-block; width: 50px; height: 1.2em; text-align: center;">1</span>		
<div style="border: 1px solid black; padding: 5px;"> Acquisition and renovation of a .93-acre parcel in the Town of Stow, with a 3 bedroom, one bath split level residence built in 1967. The Town of Stow will purchase an affordability restriction using CPA funds. Property is part of a larger 50-acre project which includes 45 acres of conservation land to be conveyed to the Town of Stow, and an approximately 5-acre horse property to be purchased by the Eye of the Storm equine rescue group, a 2 bedroom residence that will be subject to an affordability restriction upon future </div>			
12 . Development Schedule:			
	<i>Original</i>	<i>Revised</i>	<i>Optional user comments</i>
Application Date	April 1, 2003		<div style="border: 1px solid black; width: 150px; height: 150px; margin: 0 auto;"></div> <div style="position: absolute; bottom: 10px; right: 10px; font-weight: bold; font-size: 1.2em;">KUN345</div>
Construction Loan Closing	N/A		
Initial Loan Closing (MHFA only)	N/A		
Construction Start	9/27/03		
50% Construction Completion	TBD		
Construction Completion	TBD		
First Certificate of Occupancy	TBD		
Final Certificate of Occupancy	TBD		
Sustained Occupancy	TBD		
Permanent Loan Closing			

Kunelius Farm

Application Date: April 1, 2003

#VALUE!

## 13. Unit Mix:

	Low-Income Rental Assisted	Low-Income below 50%	Low-Income below 60%	Other Income 80%	Market Rate	Total Units
2 bedrooms				1		1
0 bedroom						0
1 bedroom						0
2 bedrooms						0
3 bedrooms						0
4 bedrooms						0
Total Units	0	0	0	1	0	1
Home Units*			0			0

\*HOME units included in the above totals. Other Income=Below 80% of median income

## 14. Unit Size in square feet:

	Low-Income Rental Assisted	Low-Income below 50%	Low-Income below 60%	Other Income 80%	Market Rate	Average All Incomes
2 bedrooms				1066.0		1,066
0 bedroom						N/A
1 bedroom						N/A
2 bedrooms						N/A
3 bedrooms						N/A
4 bedrooms						N/A

## 15. Number of bathrooms in each unit:

	Low-Income Rental Assisted	Low-Income below 50%	Low-Income below 60%	Other Income 80%	Market Rate	Average All Incomes
2 bedrooms				1.0		1.0
0 bedroom						N/A
1 bedroom						N/A
2 bedrooms						N/A
3 bedrooms						N/A
4 bedrooms						N/A

## 16. Funding Applied For:

Please check all the funding that is being applied for at this time, with this application:

DHCD Tax Credit Allocation .....	<input type="text" value="No"/>
Category .....	<input type="text" value="Not Applicable"/>
Category .....	<input type="text" value="Not Applicable"/>
HOME Funding through DHCD .....	<input type="text" value="No"/>
Massachusetts Housing Finance Agency (select all that apply):	
Official Action Status .....	<input type="text" value="No"/>
Construction Financing/Bridge Financing.....	<input type="text" value="No"/>
Permanent Financing .....	<input type="text" value="No"/>
Massachusetts Housing Partnership (MHP) Fund:	
Permanent Rental Financing Program .....	<input type="text" value="No"/>
Massachusetts Housing Investment Corporation (select all that apply):	
Debt Financing .....	<input type="text" value="No"/>
Tax Credit Equity Investment .....	<input type="text" value="No"/>
Boston Department of Neighborhood Development (DND):	<input type="text" value="No"/>
Other	<input type="text" value="Yes"/>
Other.....	<input type="text" value="HDSP"/>
Other.....	<input type="text"/>
Other.....	<input type="text"/>
Financing from MassDevelopment	<input type="text" value="No"/>

KUN346

17. Number of buildings planned	Total	New Construction	Rehabilitation
a. Single-Family	1		1
b. 2-4 Family	0		
c. Townhouse	0		
d. Low/Mid rise	0		
e. High-rise	0		
f. Other	0		
TOTAL	1	0	1

18. Number of units: 1

19. Gross Square Footage

a. Residential	1,066		1,066
b. Commercial	-		

20. Net Rentable Square Footage:

	Total	s.f.	Percent of Gross
a. Residential	1,066		100%
b. Commercial			N/A

21. Number of handicapped accessible units 0 Percent of total 0%

22. Fire Code Type Wood frame

23. Will building(s) include elevators? No

24. Are the following provided with the housing units:

a. Range?	Yes
b. Refrigerator?	Yes
c. Microwave?	No
d. Dishwasher?	Yes
e. Disposal?	No
f. Washer/Dryer Hookup?	Yes
g. Washer & Dryer?	No
h. Wall-to-wall Carpet?	No
i. Window Air Conditioner?	No
j. Central Air Conditioning?	No

Gas or electric: electric

Optional user comments

25. Are the following included in the rent:

a. Heat?	No
b. Domestic Electricity?	No
c. Cooking Fuel?	No
d. Hot Water?	No
e. Central A/C, if any?	No

26. Type of heating fuel: Oil

27. Total no. of parking spaces: 2 Outdoor: 2 Enclosed:

28. Number of parking spaces exclusively for the use of tenants:

a. Residential	Total: 2	Outdoor: 2	Enclosed:
b. Commercial	Total: 0	Outdoor:	Enclosed:

29 . Will rehabilitation require the relocation of existing tenants?

No

Exhibit A

30 . Scope of rehabilitation: Please describe the following (or type N/A).

a. Major systems to be replaced:

Minor septic work, conditional Title V certification.

b. Substandard conditions and structural deficiencies to be repaired:

Roof, including sheathing and shingles, windows, exterior doors, interior wall repair and painting, complete bathroom renovation, partial kitchen renovation, exterior siding repair and repainting more (see attached House Inspection)

c. Special features/adaptations for special needs clients to be housed:

31 . Are energy conservation materials in excess of the Building Code?

a. Insulation .....	No
b. Windows .....	No
c. Heating system .....	No

**Information On Site And Existing Buildings**

	Square Feet	Acres
32 . Size of Site:	40,510	0.93
33 . Wetlands area:	0	
34 . Buildable area:		

**Existing Conditions:**

35 . What is the present use of the property?

Residential

36 . Number of existing structures:

1

37 . Gross s.f. of existing structures:

1,066

38 . If rehabilitation:

number of units    num. of bedrooms

a. Number of existing residential units/bedrooms:

1

3

b. Number of units/bedrooms currently occupied:

1

2

39 . If site includes commercial space:

a. Square footage of existing commercial space:

square feet

b. Square footage currently occupied:

square feet

40 . What are the surrounding land uses?

Residential. Abutting property is currently used as a horse farm. Property is adjacent to town-owned conservation land and is located on a quiet, scenic country road.

**Utilities:**

41 . Are the following utilities available on the site:

a. Sanitary sewer?	No	Distance from site (ft.)	
b. Storm sewer?	No	Distance from site (ft.)	
c. Public water?	No	Distance from site (ft.)	
d. Electricity?	Yes		0
e. Gas?	No	Distance from site (ft.)	

If any of the above are not available, is plan attached explaining how such service will be extended to the site?

Yes

**Please attach as part of Exhibit 2**

Kunelius Farm

Application Date: April 1, 2003

#VALUE!

KUN348



**Zoning:**

*Please include information on the property zoning in Exhibit 3. This should include a zoning map, highlighting any special use or dimensional restrictions on the property. If the present zoning does not allow for the proposed use, please explain current status and how approvals will be obtained.*

42 . Does the present zoning allow the proposed development? ☒ Yes ☐ No

43 . Have you applied for a zoning variance, change, special permit or subdivision?

N/A

44 . Do you anticipate applying for a comprehensive permit under Chapter 774

N/A

**Site Control:**

45 . What form of site control do you have?

Purchase and Sale Agreement(s)

*Include copies of the appropriate site control documents as part of Exhibit 4.*

46 . Please provide details about your site control agreement.

a. Name of Seller:

Marilyn Kunelius

b. Principals of seller corporation:

c. Type of Agreement:

Purchase and Sale Agreement

d. Agreement Date:

11/11/02

e. Expiration Date:

09/26/03

f. Purchase price if under agreement

\$1,116,900

g. Is there any identity of interest between buyer and seller?

47 . In the past three years, have there been any defaults on any mortgage on the property or any other forms of financial distress?

No

48 . Are there any outstanding liens on the property?

No

**Amenities and Services:**

49 . Please indicate distance from site and locate on city/town map (Exhibit 1).

	Distance	
a. Shopping facilities .....	0.78	miles
b. Schools .....	1.90	miles
c. Hospitals .....	5.58	miles
d. Parks and recreational facilities .....	<0.1	miles
e. Police station .....	3.00	miles
f. Fire station .....	1.94	miles
g. Public transportation .....	N/A	miles
h. Houses of worship .....	1.53	miles
i. City/Town Hall .....	1.90	miles

## Environmental Information

Exhibit A

- 50 . Is there any evidence of underground storage tanks or releases of oil or hazardous materials, including hazardous wastes, on the site or within close proximity to the site?
- 51 . Has a Chapter 21E assessment been performed?   
*Please include a copy as Exhibit 2*
- 52 . Does the project consist of either: (a) new construction of more than 100 units; or (b) substantial rehabilitation of more than 200 units, or where more than 10% new floor space is added?
- 53 . Does the building require lead paint abatement?   
*Lead inspection and a plan for abatement are required and should be included in Exhibit 2. Include information on how the budget will cover expense of deleading all units, except SRO's.*
- 54 . Does the building require asbestos abatement?
- 55 . Do radon tests show radon levels exceeding four picocuries/liter?
- 56 . Is there any evidence that the premises are insulated with urea formaldehyde foam (UFFI)?
- 57 . Is the site located in an historic district, or contain buildings listed or eligible for listing in the State Register of Historic Places?
- 58 . Are there any above ground storage containers with flammable or explosive petroleum products or chemicals within 1/2 mile of the site?
- 59 . Is the site located in a floodplain or wetlands area?
- 60 . Does the site contain endangered animal or plant species?
- 61 . Is the site subject to noise impact from jet airports within five miles, major highways within 1,000 feet, or rail traffic within 3,000 feet?

# Section 2

## DEVELOPMENT TEAM SUMMARY

Exhibit A

## 62 . Developer/Sponsor Type

Non-profit corporation (Chapter 180)

## 63 . Developer/Sponsor:

Form of Legal Entity

Non-profit corporation

Legal Name

The Trust for Public Land

Address

33 Union Street

Boston, MA 02108

Contact Person

Craig MacDonnell

(617) 367-6200

(617) 367-9885

E-mail

Craig.MacDonnell@tpl.org

## 64 . Owner/Mortgagor:

Legal Name

The Trust for Public Land

Address

116 New Montgomery Street

San Francisco, CA 94105-3607

Has this entity already been formed?

Yes

Soc. Sec. or Tax ID #

237-22-2333

Principals

Francis W. Hatch

Principals

Contact Person

Craig MacDonnell

Telephone No. / Fax. No.

(617) 367-6200

6173679885

E-mail

craig.macdonnell@tpl.org

## 65 . General Partner:

Legal Name

N/A

Address

Has this entity already been formed?

No

Principal (if corporate)

Contact Person

% of Ownership

Telephone No. / Fax. No.

E-mail

## 66 . General Partner:

Legal Name

N/A

Address

Has this entity already been formed?

No

Principal (if corporate)

Contact Person

% of Ownership

Telephone No. / Fax. No.

E-mail

**67 . Development Consultant:**

Legal Name

Address

Contact Person

Telephone No. / Fax. No.

E-mail

N/A

Exhibit A

**68 . Contractor:**

Name

Address

Fed Tax ID #

Contact Person

Telephone No. / Fax. No.

E-mail

Integrity Building and Design, Inc.

498 Great Road

Acton, MA 01720

Dana McKiel

(978) 264-0657

9782669463

**69 . Architect:**

Name

Address

Contact Person

Telephone No. / Fax. No.

E-mail

Gary Wolf Architects

7 Marshall Street

Boston, MA 02108-2404

Gary Wolf

(617) 742-7557

**70 . Management Agent:**

Name

Address

Contact Person

Telephone No. / Fax. No.

E-mail

N/A

**71 . Attorney (Real Estate):**

Name

Address

Contact Person

Telephone No. / Fax. No.

E-mail

Denise Pelletier, Esq.

33 Union Street

Boston, MA 02108

(617) 367-6200

6173671616

[Denise.Pelletier@tpl.org](mailto:Denise.Pelletier@tpl.org)**72 . Attorney (Tax):**

Name

Address

Contact Person

Telephone No. / Fax. No.

E-mail

Dorothy Stookey, Esq.

33 Union Street

Boston, MA 02108

(617) 367-6200

6173671616

[dorothy.stookey@tpl.org](mailto:dorothy.stookey@tpl.org)**73 . Syndicator:**

Name

Address

Contact Person

Telephone No. / Fax. No.

E-mail

N/A

**KUN352**

Exhibit A

## 74. Guarantor:

Name  
Address  
  
Contact Person  
Telephone No. / Fax. No.  
E-mail

N/A

## 75. Service Provider or Coordinator:

Name  
Address  
  
Contact Person  
Telephone No. / Fax. No.  
E-mail

Metropolitan Boston Housing Partnership or TBD by Town of

## 76. Marketing Agent:

Name  
Address  
  
Contact Person  
Telephone No. / Fax. No.  
E-mail

Century 21 Classic Properties

42 Summer Street

Maynard, MA 01754

James Boothroyd

(978) 897-5311

9788974874

creativejim0717@aol.com

77.

Other role

Name  
Address

N/A

Contact Person  
Telephone No. / Fax. No.  
E-mail

78.

Other role

Name  
Address

N/A

Contact Person  
Telephone No. / Fax. No.  
E-mail

79. Is there any identity of interest between any members of the development team?

No

80. Please describe the relationship of the development entity to sponsoring organizations. Is the entity newly-formed or to-be-formed? Is it a single-purpose corporation? How will the parent corporation provide support to this entity? Include an organizational chart showing other affiliates of the parent corporation, as appropriate, and principals of each.

KUN353



## Uses of Funds

Exhibit A

The Contractor certifies that, to the best of their knowledge, the construction estimates, and trade-item breakdown on this page are complete and accurate.

## Direct Construction:

105 . Who prepared the estimates? Dana McKiel, Integrity Building an

Name

Signature

106 . Basis for estimates?

Based upon a review of a house inspection and a site visit on 3/18/03.

	DV	Trade Item	Amount	Description
107 .	3	Concrete	\$750	
108 .	4	Masonry	\$0	
109 .	5	Metals	\$0	
110 .	6	Rough Carpentry	\$26,440	
111 .	6	Finish Carpentry	\$10,361	
112 .	7	Waterproofing	\$0	
113 .	7	Insulation	\$2,440	
114 .	7	Roofing	\$3,300	
115 .	7	Sheet Metal and Flashing	\$0	
116 .	7	Exterior Siding	\$9,000	
117 .	8	Doors	\$1,250	
118 .	8	Windows	\$3,200	
119 .	8	Glass	\$0	
120 .	9	Lath & Plaster	\$7,160	
121 .	9	Drywall	\$0	
122 .	9	Tile Work	\$0	
123 .	9	Acoustical	\$0	
124 .	9	Wood Flooring	\$2,592	
125 .	9	Resilient Flooring	\$0	
126 .	9	Carpet	\$0	
127 .	9	Paint & Decorating	\$8,000	
128 .	10	Specialties	\$0	
129 .	11	Special Equipment	\$0	
130 .	11	Cabinets	\$6,000	
131 .	11	Appliances	\$0	
132 .	12	Blinds & Shades	\$0	
133 .	13	Modular/Manufactured	\$0	
134 .	13	Special Construction	\$0	
135 .	14	Elevators or Conveying Syst.	\$0	
136 .	15	Plumbing & Hot Water	\$4,000	
137 .	15	Heat & Ventilation	\$1,750	
138 .	15	Air Conditioning	\$0	
139 .	15	Fire Protection	\$0	
140 .	16	Electrical	\$2,150	
141 .		Accessory Buildings		
142 .		Other/misc	\$0	
143 .		<b>Subtotal Structural</b>	<b>\$88,393</b>	
144 .	2	Earth Work		
145 .	2	Site Utilities		
146 .	2	Roads & Walks		
147 .	2	Site Improvement		
148 .	2	Lawns & Planting	\$2,000	
149 .	2	Geotechnical Conditions		
150 .	2	Environmental Remediation		
151 .	2	Demolition	\$9,920	
152 .	2	Unusual Site Cond	\$0	
153 .		<b>Subtotal Site Work</b>	<b>\$11,920</b>	
154 .		<b>Total Improvements</b>	<b>\$100,313</b>	
155 .	1	General Conditions	\$7,500	
156 .		<b>Subtotal</b>	<b>\$107,813</b>	
157 .	1	Builders Overhead	\$11,416	
158 .	1	Builders Profit	\$7,610	
159 .		<b>TOTAL</b>	<b>\$126,839</b>	

160 Total Cost/square foot: \$122.91

Residential Cost/s.f.: \$122.91

KUN355

**Development Budget:**

Exhibit A

	<i>Total</i>	<i>Residential</i>	<i>Commercial</i>	<i>Comments</i>
161 . Acquisition: Land	\$320,000	\$320,000		
162 . Acquisition: Building	\$0	\$0		
163 . <b>Acquisition Subtotal</b>	\$320,000	\$320,000	\$0	
164 . Direct Construction Budget	\$126,839	\$126,839		(from line 159)
165 . Construction Contingency	\$7,308	\$7,308		5.8% of construction
166 . <b>Subtotal: Construction</b>	\$134,147	\$134,147	\$0	

**General Development Costs:**

167 . Architecture & Engineering	\$1,000	\$1,000		
168 . Survey and Permits	\$6,800	\$6,800		
169 . Clerk of the Works	\$0	\$0		
170 . Environmental Engineer	\$2,250	\$2,250		
171 . Bond Premium	\$0			
172 . Legal	\$1,750	\$1,750		
173 . Title and Recording	\$1,500	\$1,500		
174 . Accounting & Cost Cert.	\$500	\$500		
175 . Marketing and Rent Up	\$5,000	\$5,000		
176 . Real Estate Taxes	\$625	\$625		
177 . Insurance	\$1,000	\$1,000		
178 . Relocation	\$0			
179 . Appraisal	\$1,500	\$1,500		
180 . Security	\$0			
181 . Construction Loan Interest	\$4,988	\$4,988		
182 . Inspecting Engineer	\$0			
183 . Fees to:	\$0			
184 . Fees to:	\$0			
185 . MIP	\$0			
186 . Credit Enhancement Fees	\$0			
187 . Letter of Credit Fees	\$0			
188 . Other Financing Fees	\$0			
189 . Development Consultant	\$0	\$0		
190 . Other:	\$0			
191 . Other:	\$0			
192 . Soft Cost Contingency	\$1,000	\$1,000		3.7% of soft costs
193 . <b>Subtotal: Gen. Dev.</b>	\$27,913	\$27,913	\$0	

194 . <b>Subtotal: Acquis., Const and Gen. Dev.</b>	\$482,060	\$482,060	\$0	
---	-----------	-----------	-----	--

195 . Capitalized Reserves	\$0			
196 . Developer Overhead	\$0			
197 . Developer Fee	\$25,000	\$25,000		

198 . <b>Total Development Cost</b>	\$507,060	\$507,060	\$0	<b>TDC per unit</b> \$507,060
199 . <b>TDC, Net</b>	\$507,060	\$507,060	\$0	<b>TDC, Net per unit</b> \$507,060



**Additional Detail on Development Pro-Forma:**

Exhibit A

200 . Gross Syndication Investment

**Off-Budget Costs:****Syndication Costs:**

201 . Syndication Legal

202 . Syndication Fees

203 . Syndication Consultants

204 . Bridge Financing Costs

205 . Investor Servicing (capitalized)

206 . Other Syndication Expenses

207 . Total Syndication Expense

208 . Current Reserve Balance

**Reserves (capitalized):**

209 . Development Reserves

210 . Initial Rent-Up Reserves

211 . Operating Reserves

212 . Net Worth Account

213 . Other Capitalized Reserves

214 . Subtotal: Capitalized Reserves

215 . Letter of Credit Requirements

216 . Total of the Above

**Check: Line 214 is the same as line 195.**

Please Answer The Following	Dev. Reserves	Initial Rent-Up	Op. Reserves	Net Worth	Other	Letter of Credit
Who requires the reserves?						
Who administers the reserves?						
When and how are they used?						
Under what circumstances can they be released?						

**Unit Sales (For Sale Projects Only):**

217 . Gross Sales From Units

218 . Cost of Sales (Commissions, etc.)

219 . Net Receipt from Sales

**Debt Service Requirements:**

220 . Minimum Debt Service Coverage

221 . Is this Project subject to HUD Subsidy Layering Review?

*Optional user comments*

## Construction Period Sources and Uses

Exhibit A

Please fill out the following table with information on each month for which the project will be under construction. "Sources" and "Uses" should equal each other every month. Indicate loan repayment during the construction period.

**Sources of Cash:**

	Total	Closing	Month 1	Month 2	Month 3	Month 4
Construction Loan	\$187,060	\$13,925	\$23,171	\$23,171	\$23,171	\$23,171
Proceeds from Sale (Net)*	\$187,060		\$	\$	\$	\$
Equity: Cash	\$320,000	\$320,000	\$	\$	\$	\$
Equity: Tax Credit (Net)	\$0	\$	\$	\$	\$	\$
Subordinate Debt	\$0	\$	\$	\$	\$	\$
Permanent Debt	\$0	\$	\$	\$	\$	\$
Syndication Bridge Loan	\$0	\$	\$	\$	\$	\$
Other Interim Loan	\$0	\$	\$	\$	\$	\$
<b>SUBTOTAL</b>	<b>\$694,120</b>	<b>\$333,925</b>	<b>\$23,171</b>	<b>\$23,171</b>	<b>\$23,171</b>	<b>\$23,171</b>
Repayment: Construction Loan	\$187,060	\$	\$	\$	\$	\$
Repayment: Syndication Loan	\$	\$	\$	\$	\$	\$
Repayment: Interim Loan	\$	\$	\$	\$	\$	\$
<b>TOTAL SOURCES, NET</b>	<b>\$507,060</b>	<b>\$333,925</b>	<b>\$23,171</b>	<b>\$23,171</b>	<b>\$23,171</b>	<b>\$23,171</b>
<b>Cumulative Sources</b>		<b>\$333,925</b>	<b>\$357,096</b>	<b>\$380,267</b>	<b>\$403,438</b>	<b>\$426,609</b>

\* Only relevant in the case of for-sale projects.

**Uses of Cash (Expenses):****Acquisition**

	Total	Closing	Month 1	Month 2	Month 3	Month 4
	\$320,000	\$320,000	\$	\$	\$	\$

**Hard Costs:**

Direct Construction	\$126,839		\$21,140	\$21,140	\$21,140	\$21,140
Contingency	\$7,308		\$0	\$0	\$0	\$0
<b>Total Hard Costs</b>	<b>\$134,147</b>		<b>\$21,140</b>	<b>\$21,140</b>	<b>\$21,140</b>	<b>\$21,140</b>

**Soft Costs:**

Construction Loan Interest	\$4,988	\$	\$	\$	\$	\$
Architecture & Engineering	\$1,000	\$	\$250	\$250	\$250	\$250
Survey and Permits	\$6,800	\$6,800	\$	\$	\$	\$
Clerk of the Works	\$0	\$	\$0	\$0	\$0	\$0
Environmental Engineer	\$2,250	\$2,250	\$	\$	\$	\$
Bond Premium	\$0	\$	\$	\$	\$	\$
Legal	\$1,750	\$875	\$	\$	\$	\$
Title and Recording	\$1,500	\$1,500	\$	\$	\$	\$
Accounting & Cost Certificat.	\$500	\$	\$125	\$125	\$125	\$125
Marketing and Rent Up	\$5,000	\$	\$1,250	\$1,250	\$1,250	\$1,250
Real Estate Taxes	\$625	\$	\$156	\$156	\$156	\$156
Insurance	\$1,000	\$1,000	\$	\$	\$	\$
Relocation	\$0	\$	\$	\$	\$	\$
Appraisal	\$1,500	\$1,500	\$	\$	\$	\$
Security	\$0	\$	\$	\$	\$	\$
Inspecting Engineer	\$0	\$	\$	\$	\$	\$
Financing Fees	\$0	\$	\$	\$	\$	\$
Development Consultant	\$0	\$0	\$	\$	\$	\$
Other	\$0	\$	\$	\$	\$	\$
Other	\$0	\$	\$	\$	\$	\$
Developer's Overhead	\$0	\$	\$	\$	\$	\$
Developer's Fee (Net)	\$25,000	\$	\$	\$	\$	\$
Soft Cost Contingency	\$1,000	\$	\$250	\$250	\$250	\$250
Contribution to Reserves	\$0	\$	\$	\$	\$	\$
<b>Subtotal Soft Costs, Fees</b>	<b>\$52,913</b>	<b>\$13,925</b>	<b>\$2,031</b>	<b>\$2,031</b>	<b>\$2,031</b>	<b>\$2,031</b>
<b>TOTAL USES</b>	<b>\$507,060</b>	<b>\$333,925</b>	<b>\$23,171</b>	<b>\$23,171</b>	<b>\$23,171</b>	<b>\$23,171</b>
<b>Cumulative Uses</b>		<b>\$333,925</b>	<b>\$357,096</b>	<b>\$380,267</b>	<b>\$403,438</b>	<b>\$426,609</b>

**Budget: Percentage of Funds Expended**

	65.9%	4.6%	4.6%	4.6%	4.6%
--	-------	------	------	------	------

Construction Loan Balance	\$0	\$13,925	\$37,096	\$60,267	\$83,438	\$106,609
Syndication Loan Balance	\$0	\$0	\$0	\$0	\$0	\$0
Interim Loan Balance	\$0	\$0	\$0	\$0	\$0	\$0

## Exhibit 11

## Construction Period Sources and Uses

Exhibit A

Page 2

Please fill out the following table with information on each month for which the project will be under construction. "Sources" and "Uses" should equal each other every month. Indicate loan repayment during the construction period.

**Sources of Cash:**

	Month 5	Month 6	Month 7	Month 8	Month 9	Month 10
Construction Loan	\$21,140	\$54,323	\$4,988	\$	\$	\$
Proceeds from Sale (Net)*	\$	\$	\$	\$	\$	\$
Equity: Cash	\$	\$	\$	\$	\$	\$
Equity: Tax Credit	\$	\$	\$	\$	\$	\$
Subordinate Debt	\$	\$	\$	\$	\$	\$
Permanent Debt	\$	\$	\$	\$	\$	\$
Syndication Bridge Loan	\$	\$	\$	\$	\$	\$
Other Interim Loan	\$	\$	\$	\$	\$	\$
<b>SUBTOTAL</b>	\$21,140	\$54,323	\$4,988	\$0	\$0	\$0
Repayment: Construction Loan	\$	\$	\$187,060	\$	\$	\$
Repayment: Syndication Loan	\$	\$	\$	\$	\$	\$
Repayment: Interim Loan	\$	\$	\$	\$	\$	\$
<b>TOTAL SOURCES, NET</b>	\$21,140	\$54,323	(\$182,072)	\$0	\$0	\$0
<b>Cumulative Sources</b>	\$447,749	\$502,072	\$320,000	\$320,000	\$320,000	\$320,000

\* Only relevant in the case of for-sale projects.

**Uses of Cash (Expenses):****Acquisition****Hard Costs:**

	Month 5	Month 6	Month 7	Month 8	Month 9	Month 10
\$	\$	\$	\$	\$	\$	\$
Direct Construction	\$21,140	\$21,140	\$	\$	\$	\$
Contingency	\$0	\$7,308	\$	\$	\$	\$
<b>Total Hard Costs</b>	\$21,140	\$28,448	\$0	\$0	\$0	\$0

**Soft Costs:**

Construction Loan Interest	\$	\$	\$4,988	\$0	\$	\$
Architecture & Engineering	\$	\$	\$	\$	\$	\$
Survey and Permits	\$	\$	\$	\$	\$	\$
Clerk of the Works	\$	\$	\$	\$	\$	\$
Environmental Engineer	\$	\$	\$	\$	\$	\$
Bond Premium	\$	\$	\$	\$	\$	\$
Legal	\$	\$875	\$	\$	\$	\$
Title and Recording	\$	\$	\$	\$	\$	\$
Accounting & Cost Certificat.	\$	\$	\$	\$	\$	\$
Marketing and Rent Up	\$	\$	\$	\$	\$	\$
Real Estate Taxes	\$	\$	\$	\$	\$	\$
Insurance	\$	\$	\$	\$	\$	\$
Relocation	\$	\$	\$	\$	\$	\$
Appraisal	\$	\$	\$	\$	\$	\$
Security	\$	\$	\$	\$	\$	\$
Inspecting Engineer	\$	\$	\$	\$	\$	\$
Financing Fees	\$	\$	\$	\$	\$	\$
Development Consultant	\$	\$	\$	\$	\$	\$
Other	\$	\$	\$	\$	\$	\$
Other	\$	\$	\$	\$	\$	\$
Developer's Overhead	\$	\$	\$	\$	\$	\$
Developer's Fee (Net)	\$	\$25,000	\$	\$	\$	\$
Soft Cost Contingency	\$	\$	\$	\$	\$	\$
Contribution to Reserves	\$	\$	\$	\$	\$	\$
<b>Sub-Total Soft Costs</b>	\$0	\$25,875	\$4,988	\$0	\$0	\$0
<b>TOTAL</b>	\$21,140	\$54,323	\$4,988	\$0	\$0	\$0
<b>Cumulative Uses</b>	\$447,749	\$502,072	\$507,060	\$507,060	\$507,060	\$507,060

**Percentage of Funds Expended**

	4.2%	10.7%	1.0%	0.0%	0.0%	0.0%
Construction Loan Balance	\$127,749	\$182,072	\$0	\$0	\$0	\$0
Syndication Loan Balance	\$0	\$0	\$0	\$0	\$0	\$0
Interim Loan Balance	\$0	\$0	\$0	\$0	\$0	\$0

## Exhibit 11

## Construction Period Sources and Uses

Exhibit A

Page 3

Please fill out the following table with information on each month for which the project will be under construction. "Sources" and "Uses" should equal each other every month. Indicate loan repayment during the construction period.

	Month 11	Month 12	Month 13	Month 14	Month 15	Month 16
<b>Sources of Cash:</b>						
Construction Loan	\$	\$	\$	\$	\$	\$
Proceeds from Sale (Net)*	\$	\$	\$	\$	\$	\$
Equity: Cash	\$	\$	\$	\$	\$	\$
Equity: Tax Credit	\$	\$	\$	\$	\$	\$
Subordinate Debt	\$	\$	\$	\$	\$	\$
Permanent Debt	\$	\$	\$	\$	\$	\$
Syndication Bridge Loan	\$	\$	\$	\$	\$	\$
Other Interim Loan	\$	\$	\$	\$	\$	\$
<b>SUBTOTAL</b>	\$0	\$0	\$0	\$0	\$0	\$0
Repayment: Construction Loan	\$	\$	\$	\$	\$	\$
Repayment: Syndication Loan	\$	\$	\$	\$	\$	\$
Repayment: Interim Loan	\$	\$	\$	\$	\$	\$
<b>TOTAL SOURCES, NET</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Cumulative Sources</b>	\$320,000	\$320,000	\$320,000	\$320,000	\$320,000	\$320,000
* Only relevant in the case of for-sale projects.						
<b>Uses of Cash (Expenses):</b>						
<b>Acquisition</b>						
<b>Hard Costs:</b>						
Direct Construction	\$	\$	\$	\$	\$	\$
Contingency	\$	\$	\$	\$	\$	\$
<b>Total Hard Costs</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Soft Costs:</b>						
Construction Loan Interest	\$	\$	\$	\$	\$	\$
Architecture & Engineering	\$	\$	\$	\$	\$	\$
Survey and Permits	\$	\$	\$	\$	\$	\$
Clerk of the Works	\$	\$	\$	\$	\$	\$
Environmental Engineer	\$	\$	\$	\$	\$	\$
Bond Premium	\$	\$	\$	\$	\$	\$
Legal	\$	\$	\$	\$	\$	\$
Title and Recording	\$	\$	\$	\$	\$	\$
Accounting & Cost Certificat.	\$	\$	\$	\$	\$	\$
Marketing and Rent Up	\$	\$	\$	\$	\$	\$
Real Estate Taxes	\$	\$	\$	\$	\$	\$
Insurance	\$	\$	\$	\$	\$	\$
Relocation	\$	\$	\$	\$	\$	\$
Appraisal	\$	\$	\$	\$	\$	\$
Security	\$	\$	\$	\$	\$	\$
Inspecting Engineer	\$	\$	\$	\$	\$	\$
Financing Fees	\$	\$	\$	\$	\$	\$
Development Consultant	\$	\$	\$	\$	\$	\$
Other	\$	\$	\$	\$	\$	\$
Other	\$	\$	\$	\$	\$	\$
Developer's Overhead	\$	\$	\$	\$	\$	\$
Developer's Fee (Net)	\$	\$	\$	\$	\$	\$
Soft Cost Contingency	\$	\$	\$	\$	\$	\$
Contribution to Reserves	\$	\$	\$	\$	\$	\$
<b>Sub-Total Soft Costs</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>TOTAL</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Cumulative Uses</b>	\$507,060	\$507,060	\$507,060	\$507,060	\$507,060	\$507,060
<b>Percentage of Funds Expended</b>	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Construction Loan Balance	\$0	\$0	\$0	\$0	\$0	\$0
Syndication Loan Balance	\$0	\$0	\$0	\$0	\$0	\$0
Interim Loan Balance	\$0	\$0	\$0	\$0	\$0	\$0

## Exhibit 11

## Construction Period Sources and Uses

Exhibit A

Page 4

Please fill out the following table with information on each month for which the project will be under construction. "Sources" and "Uses" should equal each other every month. Indicate loan repayment during the construction period.

	Month 17	Month 18	Month 19	Month 20	Month 21	Month 22
<b>Sources of Cash:</b>						
Construction Loan	\$	\$	\$	\$	\$	\$
Proceeds from Sale (Net)*	\$	\$	\$	\$	\$	\$
Equity: Cash	\$	\$	\$	\$	\$	\$
Equity: Tax Credit	\$	\$	\$	\$	\$	\$
Subordinate Debt	\$	\$	\$	\$	\$	\$
Permanent Debt	\$	\$	\$	\$	\$	\$
Syndication Bridge Loan	\$	\$	\$	\$	\$	\$
Other Interim Loan	\$	\$	\$	\$	\$	\$
<b>SUBTOTAL</b>	\$0	\$0	\$0	\$0	\$0	\$0
Repayment: Construction Loan	\$	\$	\$	\$	\$	\$
Repayment: Syndication Loan	\$	\$	\$	\$	\$	\$
Repayment: Interim Loan	\$	\$	\$	\$	\$	\$
<b>TOTAL SOURCES, NET</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Cumulative Sources</b>	\$320,000	\$320,000	\$320,000	\$320,000	\$320,000	\$320,000
* Only relevant in the case of for-sale projects.						
<b>Uses of Cash (Expenses)</b>						
<b>Acquisition</b>	\$	\$	\$	\$	\$	\$
<b>Hard Costs:</b>						
Direct Construction	\$	\$	\$	\$	\$	\$
Contingency	\$	\$	\$	\$	\$	\$
<b>Total Hard Costs</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Soft Costs:</b>						
Construction Loan Interest	\$	\$	\$	\$	\$	\$
Architecture & Engineering	\$	\$	\$	\$	\$	\$
Survey and Permits	\$	\$	\$	\$	\$	\$
Clerk of the Works	\$	\$	\$	\$	\$	\$
Environmental Engineer	\$	\$	\$	\$	\$	\$
Bond Premium	\$	\$	\$	\$	\$	\$
Legal	\$	\$	\$	\$	\$	\$
Title and Recording	\$	\$	\$	\$	\$	\$
Accounting & Cost Certificat.	\$	\$	\$	\$	\$	\$
Marketing and Rent Up	\$	\$	\$	\$	\$	\$
Real Estate Taxes	\$	\$	\$	\$	\$	\$
Insurance	\$	\$	\$	\$	\$	\$
Relocation	\$	\$	\$	\$	\$	\$
Appraisal	\$	\$	\$	\$	\$	\$
Security	\$	\$	\$	\$	\$	\$
Inspecting Engineer	\$	\$	\$	\$	\$	\$
Financing Fees	\$	\$	\$	\$	\$	\$
Development Consultant	\$	\$	\$	\$	\$	\$
Other	\$	\$	\$	\$	\$	\$
Other	\$	\$	\$	\$	\$	\$
Developer's Overhead	\$	\$	\$	\$	\$	\$
Developer's Fee (Net)	\$	\$	\$	\$	\$	\$
Soft Cost Contingency	\$	\$	\$	\$	\$	\$
Contribution to Reserves	\$	\$	\$	\$	\$	\$
<b>Sub-Total Soft Costs</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>TOTAL</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Cumulative Uses</b>	\$507,060	\$507,060	\$507,060	\$507,060	\$507,060	\$507,060
<b>Percentage of Funds Expended</b>	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Construction Loan Balance	\$0	\$0	\$0	\$0	\$0	\$0
Syndication Loan Balance	\$0	\$0	\$0	\$0	\$0	\$0
Interim Loan Balance	\$0	\$0	\$0	\$0	\$0	\$0

# Exhibit 11

## Construction Period Sources and Uses

Exhibit A

Page 5

Please fill out the following table with information on each month for which the project will be under construction. "Sources" and "Uses" should equal each other every month. Indicate loan repayment during the construction period.

	Month 23	Month 24	Month 25	Month 26	Month 27	Month 28
<b>Sources of Cash:</b>						
Construction Loan						
Proceeds from Sale (Net)*						
Equity: Cash						
Equity: Tax Credit						
Subordinate Debt						
Permanent Debt						
Syndication Bridge Loan						
Other Interim Loan						
<b>SUBTOTAL</b>	\$0	\$0	\$0	\$0	\$0	\$0
Repayment: Construction Loan						
Repayment: Syndication Loan						
Repayment: Interim Loan						
<b>TOTAL SOURCES, NET</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Cumulative Sources</b>	\$320,000	\$320,000	\$320,000	\$320,000	\$320,000	\$320,000
* Only relevant in the case of for-sale projects.						
<b>Uses of Cash (Expenses):</b>						
<b>Acquisition</b>						
<b>Hard Costs:</b>						
Direct Construction						
Contingency						
<b>Total Hard Costs</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Soft Costs:</b>						
Construction Loan Interest						
Architecture & Engineering						
Survey and Permits						
Clerk of the Works						
Environmental Engineer						
Bond Premium						
Legal						
Title and Recording						
Accounting & Cost Certificat.						
Marketing and Rent Up						
Real Estate Taxes						
Insurance						
Relocation						
Appraisal						
Security						
Inspecting Engineer						
Financing Fees						
Development Consultant						
Other						
Other						
Developer's Overhead						
Developer's Fee (Net)						
Soft Cost Contingency						
Contribution to Reserves						
<b>Sub-Total Soft Costs</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>TOTAL</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Cumulative Uses</b>	\$507,060	\$507,060	\$507,060	\$507,060	\$507,060	\$507,060
<b>Percentage of Funds Expended</b>	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Construction Loan Balance	\$0	\$0	\$0	\$0	\$0	\$0
Syndication Loan Balance	\$0	\$0	\$0	\$0	\$0	\$0
Interim Loan Balance	\$0	\$0	\$0	\$0	\$0	\$0

Kunelius Farm

Application Date: April 1, 2003

#VALUE!

KUN362

## Exhibit 11

## Construction Period Sources and Uses

Exhibit A

Page 6

Please fill out the following table with information on each month for which the project will be under construction. "Sources" and "Uses" should equal each other every month. Indicate loan repayment during the construction period.

	Month 29	Month 30	Month 31	Month 32	Month 33	Net Balance
<b>Sources of Cash:</b>						
Construction Loan						\$0
Proceeds from Sale (Net)*						\$187,060
Equity: Cash						\$0
Equity: Tax Credit						\$0
Subordinate Debt						\$0
Permanent Debt						\$0
Syndication Bridge Loan						\$0
Other Interim Loan						\$0
<b>SUBTOTAL</b>	\$0	\$0	\$0	\$0	\$0	\$187,060
Repayment: Construction Loan						\$187,060
Repayment: Syndication Loan						\$0
Repayment: Interim Loan						\$0
<b>TOTAL SOURCES, NET</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Cumulative Sources</b>	\$320,000	\$320,000	\$320,000	\$320,000	\$320,000	
* Only relevant in the case of for-sale projects.						
<b>Uses of Cash (Expenses)</b>						
<b>Acquisition</b>						\$0
<b>Hard Costs:</b>						
Direct Construction						\$0
Contingency						\$0
<b>Total Hard Costs</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Soft Costs:</b>						
Construction Loan Interest						\$0
Architecture & Engineering						\$0
Survey and Permits						\$0
Clerk of the Works						\$0
Environmental Engineer						\$0
Bond Premium						\$0
Legal						\$0
Title and Recording						\$0
Accounting & Cost Certificat.						\$0
Marketing and Rent Up						\$0
Real Estate Taxes						\$0
Insurance						\$0
Relocation						\$0
Appraisal						\$0
Security						\$0
Inspecting Engineer						\$0
Financing Fees						\$0
Development Consultant						\$0
Other						\$0
Other						\$0
Developer's Overhead						\$0
Developer's Fee (Net)						\$0
Soft Cost Contingency						\$0
Contribution to Reserves						\$0
<b>Sub-Total Soft Costs</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>TOTAL</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Cumulative Uses</b>	\$507,060	\$507,060	\$507,060	\$507,060	\$507,060	
<b>Percentage of Funds Expended</b>	0.0%	0.0%	0.0%	0.0%	0.0%	
Construction Loan Balance	\$0	\$0	\$0	\$0	\$0	
Syndication Loan Balance	\$0	\$0	\$0	\$0	\$0	
Interim Loan Balance	\$0	\$0	\$0	\$0	\$0	

# APPENDIX A

Exhibit A

## "One-Stop" Affordable Housing Finance Application Required Exhibits and Attachments

Note: These must be submitted as part of the HDSP application

	DHCD HDSP
<i>General Exhibits:</i>	
1 Site Information	Y
2 Environmental	Y
3 Evidence of Zoning	Y
4 Evidence of Site Control	Y
5 Evidence of Local Support	N
6 Market Information and Acquisition Value	Y
7 Marketing Plan*	N
8 Affirmative Fair Marketing Plan	N
9 Equal Opportunity Questionnaire	N
10 Sales Prices and Affordability*	Y*
11 Construction Period Sources and Uses	N
12 Tax-Exempt Project Information*	N*
13 Relocation Plan*	N
14 Special Needs Service Plan*	Y*
15 Required Tax Credit Certifications*	N
<i>Design Exhibits:</i>	
16 Preliminary Plans and Specifications	Y
17 Commitment Drawings and Specifications	N
18 Soil and/or Structural Report*	N
19 Energy Budget	N
<i>Funding Interest/Commitments:</i>	
20 Construction Financing	Y
21 Permanent Financing	Y
22 Equity Commitment*	Y*
23 Other Funding Commitments*	Y*
24 Rental Subsidies*	Y*
<i>Developer Team Information:</i>	
25 Developer Profile	Y
26 Mortgagor's Other Real Estate	Y
27 Architect's Resume	N
28 Management Agent Profile	N
29 General Contractor's Profile	L
30 Financial Statement and Credit Release	N
31 Mortgagor Personal Financial Statement	N
32 Individual Financial Profile	N
33 General Contractor's Financial Capacity	N

\*Only if applicable (see instructions in "One Stop.")

### Legend:

Y = Yes, required; application will be deemed incomplete if not submitted.

N = Not required.

L = Not required with application, but may be required prior to commitment or closing; should be submitted with application if available.



## Exhibit 10: Sales Prices and Affordability

If the proposed project is *for-sale* housing, then complete the following sales and affordability information.

**10:1 Unit Descriptions:** Describe each unit type or style which will have different sales prices and assign them each letters (A, B, C, etc.).

Type	Number of Units	Bed-rooms	Square Footage	Bath-rooms	Appliances	Other
A	1	2	1066	1		
B						
C						
D						
E						
F						
G						
H						

**10:2 Sales Prices:**

Type	Sales Price	Income to Afford	Percent of Median	Number of Units, By Phase			
				I	II	III	IV
A	\$199,000	\$47,855 **	59%	1			
B							
C							
D							
E							
F							
G							
H							

\*\* Assumes 5.5%, 30 year fixed rate mortgage currently available from several local lenders

**10:3 Subsidy:**

Source of subsidy (if any) to support reduced prices or below-market financing:  
HDSP \_\_\_\_\_

Amount of subsidy: \$320,000 \_\_\_\_\_

**10:4 Source of Financing:**

Indicate source of permanent financing: Trust for Public Land, Homeowner End Loans.

KUN365

Item 1-4: Grant Management Plan

In compliance with 24 Code of Federal Regulations Part 85, and M.G.L. Ch. 30B, the Town of Stow will hire a grant management consultant with suitable CDBG experience to administer the HDSP grant for the Town.

Upon notice of grant award, the Town of Stow will circulate, according to procedures described in *Municipal, County, District, and Local Authority Procurement of Supplies, Services, and Real Property*, a request for bids for the management, administration, and oversight of this grant. The consultant will be reviewed by DHCD for suitability prior to the commencement of the contract between the town and the consultant.

Because the Town of Stow largely relies on volunteer time, it is inappropriate to expect that existing personnel within the Town of Stow would be able to administer this grant. Because of this, and because of the level of understanding of the CDBG process required, the Town of Stow recognizes that an outside administrator is required.

To that end, the Town of Stow requests \$32,000.00 in administrative assistance to cover salary and soft costs.

As directed by DHCD, the Town of Stow will contract with a grant management administrator who will develop a grant management plan, including systems of checks and balances for oversight of all project activities.

[Subcontractors used for this project will be contracting directly with the Trust for Public Land. Other than any required public bidding processes, there will be no relationship between subcontractors and the Town of Stow.]

## MASSACHUSETTS CDBG PROGRAM

[illegible]

**MASSACHUSETTS CDBG PROGRAM**  
**Budget Summary Sheet**  
**Form 1-6**

PROGRAM/PROJECT/ACTIVITY		HDSP FUNDS (\$)	OTHER FUNDS
1	PROPERTY ACQUISITION	\$320,000	
2	CLEARANCE/DEMOLITION		
3	RELOCATION		
4	HOUSING REHABILITATION	XXXXXXXXXX	XXXXXXXXXX
A	Program Delivery	\$32,000	\$160,663
B	Unit Development/Creation		
C	Rehabilitation Loan/Grant		
D	Other		
5	COMMUNITY ECONOMIC DEVELOPMENT	XXXXXXXXXX	XXXXXXXXXX
	Program Delivery	XXXXXXXXXX	
	Acquisition	XXXXXXXXXX	
	Commercial Improvements (Signs/Facades)	XXXXXXXXXX	
	Assist. to For-profits (formally Sm. Business Assist.)	XXXXXXXXXX	
	Infrastructure or Streetscape Improvements	XXXXXXXXXX	
	Planning/Technical Assistance Activities	XXXXXXXXXX	
	Downtown Partnerships/Technical Assistance	XXXXXXXXXX	
	Other/Microenterprise Assistance	XXXXXXXXXX	
6	PUBLIC FACILITIES/INFRASTRUCTURE	XXXXXXXXXX	XXXXXXXXXX
A	Program Delivery		
B	Streets and Sidewalks		
C	Parks and Recreation		
D	Neighborhood Facilities		
E	Parking		
F	Water, Sewer, Drainage		
G	Architectural Barriers		
H	Other		
7	OTHER/PLANNING		
8	PUBLIC SOCIAL SERVICES	XXXXXXXXXX	XXXXXXXXXX
A	Program Delivery	XXXXXXXXXX	XXXXXXXXXX
B	Program Costs	XXXXXXXXXX	XXXXXXXXXX
9	GENERAL ADMINISTRATION		
	TOTAL PROGRAM COSTS	\$352,000	\$160,663

Item 1-7: Affordability and Recapture Plan

This project will be subject to the Affordability and Recapture provisions outlined in the attached Regulatory Agreement and Attachments 1-7.1-3. The Town believes that these provisions will ensure affordability, discourage real estate speculation, and adequately provide information about the availability of affordable units to all relevant population groups.

The components of this plan include a Regulatory Agreement, suggested Affordable Housing Covenant (Attachment 1-7.1) which includes language describing the maximum resale value of the unit, the number of years that the restriction will be in effect (in perpetuity), methods for the community's monitoring of property owner compliance, methods for the community to take corrective action in instances of non-compliance with the plan, and provisions for preventing windfall on sale. In addition, the plan includes a Monitoring Service Agreement (Attachment 1-7.2) and a Marketing, Monitoring, Education and Enforcement Plan (Attachment 1-7.3) to be used by the Town of Stow with respect to the property at 142 Red Acre Road.

REGULATORY AGREEMENT

In consideration of the mutual promises contained herein, The Trust for Public Land, a California nonprofit corporation having a regular place of business at 33 Union Street, Boston, Massachusetts 02108 ("TPL"), and the Town of Stow, Massachusetts, a municipal corporation with a mailing address of 380 Great Road, Stow, Massachusetts 01775 ("Town"), hereby agree that with respect to the intention of TPL to purchase property located at 142 Red Acre Road, Stow, Massachusetts (the "Property") for the purposes of renovating the single-family residence located thereon; and with respect to the Town's intention to make application to the Department of Housing and Community Development ("DHCD") for Housing Development Support Program funds to be utilized to assist TPL regarding the acquisition, renovation and resale of the Property (the "Project"), the following terms shall apply:

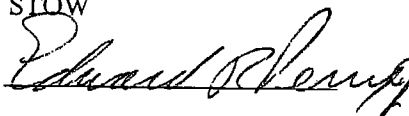
1. TPL and the Town agree to abide by the terms of any DHCD grant made with respect to the Project;
2. TPL and the Town agree that the terms of the [Affordable Housing Covenant] attached hereto as Attachment 1-7.1 shall govern the Project;
3. TPL and the Town agree that the Monitoring Services Agreement attached hereto as Attachment 1-7.2 shall govern the Project;
4. TPL and the Town agree that the Marketing, Monitoring, Education and Enforcement Plan attached hereto as Attachment 1-7.3 shall govern the Project.

TRUST FOR PUBLIC LAND

TOWN OF STOW

By \_\_\_\_\_

By



[Proposed Form of Agreement]

KUN370

Attachment 1-7.1**AFFORDABLE HOUSING COVENANT**

for 142 Red Acre Road, Stow MA

OWNER - \_\_\_\_\_

OWNER'S ADDRESS - 142 Red Acre Road, Stow, Massachusetts 01775.

COVENANT HOLDER - Town of Stow, Massachusetts.

COVENANT HOLDER 'S ADDRESS - 380 Great Road, Stow, MA 01775-2127.

PREMISES - The land, building and other improvements, presently a 1 family house, now or hereafter thereon located at 142 Red Acre Road, Stow, Massachusetts, as more completely described in Exhibit A hereto, together with all rights and easements now or hereafter appurtenant thereto and all fixtures now or hereafter thereon insofar as the same are a part of the realty.

RESIDENCE - The residential unit at the Premises occupied by the Owner's Household.

**Summary of the Affordable Housing Covenant**

I am buying this home to live in it as my principal residence. I acknowledge that I am qualified to buy and live in this home because my income is \_\_\_\_\_. This home has been made affordable by government activities so that it can be home to persons of low or moderate income in perpetuity and I recognize that I must (i) live in the Residence as my principal residence and (ii) sell the home to persons having income no greater than permitted under this Covenant. Just as I could not afford to buy this home unless its price were reduced to affordable levels, they will also need the price at which I sell to be at affordable levels. I agree to this restriction recognizing I probably will not make as much profit from sale of this home as another homeowner in the neighborhood who purchased and may sell at full market value. To enforce these provisions intended to assure long term affordability for this home, I recognize I will need to give notice to the **Covenant Holder** (or its designated representative) when I sell the home, the **Covenant Holder** will have a right to purchase the Premises if it wishes, and any buyer will be subject to this Affordable Housing Covenant. I recognize that this paragraph is a brief summary of the complete terms and conditions of this Covenant, which are set out below, which have been explained to me to my satisfaction, and to which I agree.

Owner initials \_\_\_\_\_

## **The Full Covenant**

The Covenant Holder, to further the public purpose of assuring affordable housing in Stow, Massachusetts, has provided assistance in the creation of the Premises for long term use as Affordable Housing to be owned by members of a Household of Qualified Income for use as their principal residence. The assistance and support of the Covenant Holder has reduced significantly the Owner's cost of buying the Premises. The Owner acknowledges the receipt and sufficiency of such assistance and support as consideration for this Covenant.

For valuable consideration, the receipt and sufficiency of which is acknowledged, the Owners, for themselves and their heirs, successors and assigns (including all persons who subsequently own the Premises or any interest therein while this Covenant is in effect), hereby covenant and agree that the Premises shall be subject to the following covenants and restrictions for the benefit of the Covenant Holder, its successors, assigns, agents and designees, with the intent that these restrictions created by this Covenant shall be perpetual duration.

### **1. Definitions**

The following words and phrases when capitalized have the following meaning:

1.1. "Affordable Housing" means housing occupied as its principal residence by a Household who at the time of the purchase of the Premises by one or more of its members was of Qualified Income as the same may be defined from time to time by the Covenant Holder of Stow.

1.2. "Covenant" means this Affordable Housing Covenant.

1.3. "Covenant Holder" means any legal person or entity who possesses the rights under this and similar Covenants or to whom the rights under this and similar Covenants have been transferred either outright or for purposes of administration. A general delegation of authority by the current Covenant Holder to another person as a new Covenant Holder shall transfer those rights, powers and obligations assigned to the new Covenant Holder in this Covenant. Transfer of any rights, powers and obligations assigned to the Covenant Holder in this Covenant shall be effective only to the extent such rights, powers and obligations are specifically enumerated in the delegation of authority.

1.4. "Fair Market Value" means fair market value as of the day of the event in question (for example, purchase, foreclosure or termination of this Covenant) taking into account the restrictions on ownership and occupancy imposed by this Covenant as if such restriction were perpetual. (When not capitalized, fair market value has the ordinary meaning established by law or custom without regard to the terms of this Covenant.)

1.5. "Household" means all persons who reside together and with the Owner at the Residence.

1.6. "Low income" means total household income less than or equal to sixty percent (60%) of the Median Income.



1.7. "Maximum Resale Price" means, with respect to the Premises, as of a given date, the sum of:

- (a) the consideration paid for the Premises as specified in the Deed to the Owner increased five percent (5%) (per annum), compounded annually;
- (b) plus the actual cost of bedrooms added to the units located on the Premises;
- (c) plus the actual cost of bathrooms added to the units located on the Premises if such unit(s) contain(s) three (3) or more bedrooms;
- (d) plus the actual cost of other capital improvements made to the Premises by the Owner from time to time subject to the limitation that credit for such capital improvements shall not exceed one percent (1%) per year of the consideration paid for the Premises by the Owner;
- (e) plus the amount incurred by the Owner for the services of a real estate agent, up to an amount not greater than six percent (6%) of the sum of (a) through (d) and provided that such expense is documented (the "Broker's Commission").

Consideration shall include the aggregate value of all money, property and services of every kind given or paid by the buyer to or for the benefit of the Owner in connection with the transfer of the Premises, including any consideration paid for any other real property or personal property conveyed by the Owner to the buyer.

The cost of capital improvements shall be included in the Maximum Resale Price only if, (i) the improvement is considered to be a "capital" improvement within the definition of the United States Internal Revenue Code; (ii) the improvements complied with all pertinent statutes, ordinances and regulations at the time such improvements were made, and (iii) the cost of such improvements have been documented to the satisfaction of the Covenant Holder at the time of resale.

Upon written application and upon submission of such evidence as the Covenant Holder may require, the Covenant Holder shall furnish to any Owner, mortgagee or person having a security interest in the Premises, a certificate in recordable form stating the Maximum Resale Price for the Premises pursuant to Section 3.1.5 below.

1.8. "Median Income" means the median household income for the Boston Metropolitan Statistical Area ("BMSA") set forth in or calculated pursuant to regulations promulgated by HUD, pursuant to Section 8. If HUD discontinues publication of median income statistics, then the Covenant Holder shall designate another measure of household income.

1.9. "Moderate income" means total household income less than or equal to eighty percent (80%) of Median Income.

1.10. "Owner" means each legal and equitable owner of all or any portion of the Premises during the term of this Covenant, including the Owner identified above, and any subsequent owner by sale, conveyance or other transfer of any legal or beneficial interest in the

Premises. Unless the context otherwise requires, "Owner" shall mean the Owner at the time in question. "Owner" and "owners" are used interchangeably.

1.11. "Qualified Income" means the Household income level of a purchaser of the Premises which shall not exceed an amount calculated as follows:

- (a) Calculate the "Imputed Loan Amount" by multiplying the Maximum Resale Price at the time of the sale by ninety percent (90%);
- (b) Calculate the "Imputed Monthly Debt Service Amount" by calculating the level monthly payment needed to amortize the Imputed Loan Amount, using the average interest rate offered during the 30 days prior to the date of said calculation [by financial institution approved by the Covenant Holder] for a thirty-year, fixed rate residential mortgage, or as specified in such standard index of home mortgage loans as the [Covenant Holder] may designate from time to time;
- (c) Calculate the "Annual Imputed Housing Cost" by adding twelve times the Imputed Monthly Debt Service Amount plus three times the Imputed Monthly Debt Service Amount (to make a standard allowance for real estate taxes and insurance) plus twelve times the imputed monthly condominium fee applicable to the Residence, if any, as the case may be; and
- (d) Calculate Qualified Income by multiplying the Annual Imputed Housing Cost by 3.928.

1.12. "Section 8" means Section 8 of the Housing Act of 1937, as amended by the Housing and Community Development Act of 1974 (24 CFR Part 812), or any successor thereto.

1.13. "Term" shall mean that period during which the restrictions imposed by this Covenant are legally enforceable against the Premises. It is the parties' intention that the Term shall be of perpetual duration.

## **2. Affordable Housing Covenants**

### **2.1. Covenant as to Residence**

2.1.1 Affordable Housing; Principal Residence. Each Owner covenants and agrees that the Residence shall be Affordable Housing throughout the term of this Covenant.

2.1.2 Principal Residence. Each Owner agrees that, except as otherwise expressly permitted in this Covenant, the Residence shall be used only as the principal residence for members of the Household of which the Owner is a member. Each Owner agrees not to permit use or occupancy of the Residence by any other person or for any other purpose (including without limitation short-term tenancy) without the prior written consent of the Covenant Holder, which consent need not be given if in the Covenant Holder's judgment the occupancy or use would not further the purposes of this Covenant to promote Affordable Housing in Stow.

**2.1.3 Changes in Household's Circumstances.** It is not a violation of this Covenant if the Household of which the Owner is a member ceases during the Owner's ownership of the Premises to be of Qualified Income, provided the Owner's Household continues to occupy the Residence as its principal residence.

**2.1.4 Accessory Legal Uses.** It is not a violation of this Covenant if members of the Owner's Household, while occupying the Residence as their principal residence, make accessory use of the Residence (for instance, as their place of business) so long as such additional use is in compliance with zoning and all other requirements of law.

**2.1.5 Sale Only to Households of Qualified Income as Principal Residence.** Under this Covenant, the Premises can be sold or otherwise transferred (i) only for an amount not exceeding the Maximum Resale Price and (ii) only to members of Households who at the time of acquisition of their interest in the Premises are a Household of Qualified Income acquiring the Residence for occupancy as their principal residence.

### **3. Rights and Obligations on Sale of Premises**

#### **3.1.. The Owner's Right to Sell the Premises.**

**3.1.1 Notice of Intent to Sell.** Any time the Owner intends to sell or otherwise voluntarily transfer the Premises or any interest in the Premises, the Owner shall give written notice to the Covenant Holder in the manner required in Section 7 which shall state the Owner's intention to sell or otherwise voluntarily transfer the Premises or any interest in the Premises (the "Notice of Intent to Sell").

**3.1.2 Second Notice of Intent to Sell.** The Owner, having given a Notice of Intent to Sell as stated above in Notice of Intent to Sell as to which the Purchase Rights were not exercised, shall give written notice to the Covenant Holder in the manner required in Section 7 prior to making a legally binding obligation to sell or otherwise transfer the Premises or any interest therein (the "Second Notice of Intent to Sell").

The Owner's Second Notice of Intent to Sell shall specify at least

- (i) the full consideration for the proposed sale (which in no event shall exceed the Maximum Resale Price), and in the case of other voluntary transfer, a description of the proposed transaction,
- (ii) sufficient evidence to determine whether each person to whom any interest in the Premises is proposed to be sold or otherwise transferred is / are members of a Household of Qualified Income as defined in this Covenant and
- (iii) the statement of each person to whom any interest in the Premises is proposed to be sold or otherwise transferred that (a) their Household intends to use the Residence as its principal residence and (b) they have read and understand this Covenant.

3.1.3 Sale Free of Repurchase Rights Following Second Notice To Sell. Only after the Purchase Rights have expired unexercised as stated in this Covenant, the Owner may proceed to sell the Premises to the proposed purchaser(s) identified in the Second Notice of Intent to Sell or otherwise transfer the Premises to the person(s) identified in the Second Notice of Intent to Sell, free of the Purchase Rights for a price not exceeding the price stated in the Second Notice of Intent to Sell. In all events the Premises shall remain as Affordable Housing as stated in this Covenant until the termination of this Covenant.

3.1.4 Revival of Purchase Rights. Any sale of the Premises, or any other transfer the Premises, occurring more than six (6) months after the last day the Covenant Holder could have exercised the Purchase Rights under the Notice of Intent to Sell required under Section 3.1.2, Second Notice of Intent to Sell, shall be subject once again to all the Covenant Holder's Purchase Rights, a new Notice of Intent to Sell (and Second Notice of Intent to Sell, as the case may be) shall be required and the Covenant Holder shall have all the Purchase Rights as to such sale or other transfer as stated above.

3.1.5 Certificate of Price and Purchaser's Qualification. The Owner may request, and the Covenant Holder after due verification shall issue (when such is the case), a certificate in recordable form stating that the price for the proposed purchase does not exceed the Maximum Resale Price and that the proposed purchaser(s) and the purchaser(s) Household are qualified to own the Premises under the terms of this Covenant. Such certificate shall be valid for the period stated in the certificate, which shall not be less than ninety (90) days.

3.1.6 Deed to Reference This Covenant. The Owner shall include a reference to this Covenant in any and all deeds or other instruments conveying any interest in the Premises or any part thereof or interest therein, although neither the validity nor enforceability of this Covenant shall be affected in any manner by failure to do so.

### 3.2. The Covenant Holder's Right to Purchase the Premises

3.2.1 Grant of Purchase Rights. To maintain the Residence as Affordable Housing throughout the Term of this Covenant, the Covenant Holder shall have, and each Owner hereby grants the Covenant Holder the right (but without obligation) to purchase the Premises in any of the following circumstances (the "Purchase Rights"):

- (a) The Owner has given the Covenant Holder a Notice of Intent to Sell or a Second Notice of Intent to Sell as stated in Section 3.1; or
- (b) The Residence is no longer the principal residence of the Owner whose occupancy fulfills the requirements of Section 2 (or that deceased Owner's spouse as permitted in Changes in Household's Circumstances above), or the Premises is being used in any other manner which does not comply with this Covenant, the Owner (or that deceased Owner's spouse) has been given written notice identifying the violations and has failed to cure them; or
- (c) Any legal or beneficial interest in the Premises is conveyed without both Notice of Intent to Sell and Second Notice of Intent to Sell as required in Section 3

having been given, unless the Covenant Holder has waived the Purchase Rights in writing; or

- (d) The Covenant Holder has notice of a pending mortgage or other lien foreclosure or similar proceeding (for instance, a sheriff's sale) against the Premises; or
- (e) The Covenant Holder has notice that the Premises are being taken for unpaid taxes; or
- (f) The Owner made material misrepresentations in applying to buy the Premises which cause the Owner's ownership of the Premises to be not in compliance with this Covenant; or
- (g) The Owner has failed to observe and perform the Owner's obligations under this Covenant (other than as stated in (h) below), has been given written notice identifying the violations and has failed to cure them; or
- (h) The Owner has failed to observe and perform the Owner's obligations under this Covenant in a manner which constitutes criminal conduct or in the Covenant Holder's judgment constitutes other willful, egregious and continuing violation of such obligations.

The Covenant Holder shall be obligated to give the Owner notice and an opportunity to cure only for events under subsections (b) or (g); and for those events, the Owner shall have a reasonable time to cure which shall not exceed six months. In all cases other than sale or other transfer of the Premises under subsection (a), the Covenant Holder's right to buy the Premises shall continue only while the event giving rise to exercise of the Purchase Rights continues unremedied.

3.2.2 Duration of Purchase Rights. The Purchase Rights may be exercised throughout the term of this Covenant.

3.2.3 Purchase Price. The purchase price of the Premises under the Purchase Rights shall be one of the following:

- (i) if the Owner proposes to sell or otherwise voluntarily transfer the Premises,
  - (a) the amount for which the Owner proposes to sell or transfer the Premises, or
  - (b) the Maximum Resale Price if less; and
- (ii) in all other cases, the Maximum Resale Price .

3.2.4 Exercise of Purchase Rights. To exercise the Purchase Rights, the Covenant Holder shall give written notice to the Owner in the manner described in Section 7 as follows.

3.2.5 If the Covenant Holder is exercising the Purchase Rights pursuant to a Notice of Intent to Sell or a Second Notice of Intent to Sell, the Covenant Holder shall give its notice of exercise, if at all, within (sixty calendar (60) days) (in response to a Notice of Intent to

Sell) or ten (10) business days (in response to a Second Notice of Intent to Sell) of receipt of the Owner's Notice of Intent to Sell (or Second Notice of Intent to Sell, as the case may be).

The Covenant Holder may give notice exercising the Purchase Rights in all other circumstances until the event giving rise to the Purchase Rights has ceased to exist.

3.2.6 Closing Procedure. The closing shall be held on the date specified at 2:00 P.M. at the \_\_\_\_\_ of Deeds (unless the Covenant Holder's notice specifies another place for closing in Stow) on a date not greater than ninety (90) days before the notice of exercise under Section 3.2.5. The Premises are to be conveyed by a good and sufficient quitclaim deed to the Covenant Holder or its designee, conveying good and clear record and marketable title free from encumbrances except (i) such taxes for the then current year as are not due and payable on the date of the delivery of the deed, (ii) such matters of record (other than mortgages) to which this Covenant was intended to be subordinate at the time of its recording, and (iii) such other matters of record (other than mortgages) to which the Covenant Holder gave its express written consent. The Premises shall be delivered in the same condition as at the time of the Covenant Holder's exercise of the Purchase Rights (but always in at least the condition required under this Covenant) and shall be free of all tenants and occupants as to the Residence. The Covenant Holder may inspect the Premises prior to closing to determine whether its condition complies with this paragraph. Common expenses, fuel, and water and sewer use charges, if applicable, and current real estate taxes shall be adjusted as of the closing date.

3.2.7 Purchaser's Right to Cure Defaults at Closing. If the Owner shall be unable on the closing date to give title or to make conveyance or to deliver possession of the Premises, all in accordance with the terms of this Covenant, or if on the closing date the Premises in any other way does not conform with the requirements of this Covenant, then the Covenant Holder may apply as much of the Purchase Price as necessary to curing such failures and nonconformities; but this remedy shall not be deemed to waive, impair or otherwise diminish the priority of the Purchase Rights over other's rights, whether or not appearing of record.

3.2.8 No Closing if Defaults Cured. Except as to Purchase Rights arising under a Notice of Intent to Sell or a Second Notice of Intent to Sell, if at closing the event(s) giving rise to exercise of the Purchase Rights have been remedied and no longer exist, then the Purchase Rights may not be exercised with respect to those events.

3.2.9 Purchase Rights Arising in Sales Revocable Only by Covenant Holder. Purchase Rights which have been exercised pursuant to a Notice of Intent to Sell or a Second Notice of Intent to Sell shall not be revocable except by the Covenant Holder.

3.2.10 Purchase Rights Exercisable as to All Ownership Interests. The Purchase Rights shall always be exercisable as to the entire ownership interest in the Premises, notwithstanding that the event giving rise to the Purchase Rights might involve less than the entire ownership interest, and shall be exercisable against all the Owners (or any subsequent Owner) notwithstanding that the acts of fewer than all the Owners (or a prior Owner) gave rise to the Purchase Rights.

3.3. Certificate of Nonexercise of Purchase Rights. If the Covenant Holder does not exercise the Purchase Rights, the Owner may request, and the Covenant Holder shall issue, a certificate in recordable form stating that the Covenant Holder did not exercise the Purchase Rights as to specified events. Such certificate, if recorded with the Middlesex Registry of Deeds, shall constitute the Covenant Holder's waiver of the Purchase Rights as to the events stated therein.

3.4. Maintenance of Premises. The Owner covenants to maintain the Premises in good order, repair and condition at all times, including without limitation all fixtures, utility services, driveway and parking areas, and landscaping in existence from time to time. Without limiting the foregoing, the Owner shall maintain the Premises in full compliance with all laws, regulations, ordinances, codes, orders or other law, now existing or hereafter enacted, regarding the habitability of the Premises as housing.

#### 4. **Compliance**

4.1. Certificate of Compliance. Each sale, conveyance or other transfer of full or partial ownership of the Premises shall be subject to all the terms of this Covenant (including without limitation the Purchase Rights) unless a certificate, signed, and acknowledged by the Covenant Holder which acknowledges non-exercise of the Purchase Rights, or waives the same, or acknowledges the purchaser(s) qualifications, as the case may be, is recorded with the Middlesex Registry of Deeds. The Covenant Holder agrees to issue such a certificate, when required, within a reasonable time of receipt of written request. If the Covenant Holder determines that a proposed conveyance, sale or other transfer does not comply with the requirements of this Covenant, or in the event of other noncompliance rendering issuance of such a certificate inappropriate, the Covenant Holder shall within such time issue a statement in writing (which need not be in recordable form) stating in reasonable detail the reasons for the finding of noncompliance.

4.2. Reliance on Evidence of Compliance with this Agreement. Any mortgagee or other bona fide purchaser for value of the Premises may conclusively rely upon a certificate issued by the Covenant Holder pursuant to this Section as to compliance with or waiver of rights under this Covenant, as the case may be.

4.3. Compliance Information. The Owner shall furnish such information about the Premises as the Covenant Holder may reasonably request from time to time, for example, on the identity of each Owner and of each member of the Household living in the Residence, the identity of any mortgagee or other person having an interest in the Premises, the full consideration paid for the Premises or any interest therein identified by category (e.g., equity, institutional loan and so forth), the condition of the Premises, and any other information which the Covenant Holder in good faith deems relevant, all for the purpose of assuring compliance with this Covenant.

#### 5. **Enforcement**

5.1. Remedies. Without limiting other remedies of the Covenant Holder, in the event a court of competent jurisdiction finds that any Owner sold, conveyed or otherwise transferred,

or leased the Residence, or any Owner or any member of the Household living in the Residence used the Residence in violation of the provisions of this Covenant, or that in any other material way any Owner or any member of such Household was in violation of this Covenant, then after expiration of all applicable appeal rights the Covenant Holder shall be entitled to the following remedies (which shall be cumulative and not mutually exclusive) against each Owner and any other person whose conduct has contributed to the violation :

- (a) specific performance of the provisions of this Covenant (including, if such be the case, the Covenant Holder's assertion of the Purchase Rights as to such violation);
- (b) voiding of any rental arrangement that violates this Covenant;
- (c) (i) in the case of any rental which violated this Covenant, damages equivalent to the rent charged during the existence of the violation, or (ii) in the case of a conveyance or other transfer of the Premises which violates this Covenant, damages for the cost of creating or obtaining other comparable dwelling units to replace the Premises in the event it can no longer be Affordable Housing for Households of Qualified Income;
- (d) voiding of any contract for sale, or any sale or other transfer or conveyance, of the Premises in violation of the provisions of this Covenant including without limitation any sale, transfer or conveyance made in the absence of a certificate from the Covenant Holder approving such sale, transfer or conveyance as provided in Section 5, Certificate of Compliance of this Covenant; or
- (e) Damages in the amount of the Affordable Housing Subsidy, together with interest thereon, as set forth in the Mortgage Securing this Affordable Housing Covenant.

5.2. Attorney's Fees. If any action is brought to enforce this Covenant, the prevailing party shall be entitled to reasonable attorneys' fees and other costs of bringing such action, in addition to any other relief or remedy to which such party may be entitled.

5.3. Covenant Holder Right to Enter. Each Owner hereby grants to the Covenant Holder the right to enter upon the Premises upon reasonable notice for the purpose of enforcing the restrictions contained in this Covenant.

5.4. Survival of Enforcement Rights. Notwithstanding the definition of Owner hereinbefore contained, the rights of enforcement for violations of this Covenant shall survive any subsequent sale or transfer of the Premises.

5.5. Remedies under Separate Instruments Not Limited. Nothing in this Covenant shall limit exercise of rights or remedies (for instance, foreclosure under the Mortgage Securing Obligations Under A Certain Affordable Housing Covenant recorded herewith) arising under an instrument other than this Covenant.



## 6. Mortgagees' Rights

Other provisions of this Covenant notwithstanding, a financial institution (the "Lender") holding a mortgage or security interest in the Premises which secures repayment of funds loaned to purchase the Premises (or to refinance any such mortgage) or for other purposes which comply with this Covenant, shall acquire title by deed in lieu of foreclosure, and such Lender (or any other successful bidder(s) at a foreclosure sale) shall acquire title by foreclosure superior to this Affordable Housing Covenant and the Mortgage which secures it, and all Affordable Housing restrictions, including all Purchase Rights contained in this Covenant, shall terminate and have no further effect. All notices shall be sent to the Covenant Holder as set forth in Section 7 of this Covenant. The holders of all other mortgage(s) (or any other successful bidder(s) at a foreclosure sale of such other mortgage(s)) who shall acquire title, whether by foreclosure or deed in lieu thereof, are and shall remain subject to this Covenant.

Within a reasonable time of receipt of written request, the Covenant Holder will issue a certificate in recordable form stating whether a mortgage secures repayment of funds loaned to purchase the Premises (or to refinance any such mortgage) or for other purposes which comply with this Covenant, and any such certificate, when recorded with the Middlesex District Registry of Deeds, shall be binding and conclusive on the Covenant Holder and all other persons relying thereon.

Notwithstanding the foregoing, if any person who was an Owner of the Premises immediately prior to foreclosure acquires an interest in the Premises through or subsequent to foreclosure, or by deed in lieu of foreclosure, then all covenants and the Purchase Rights contained herein shall apply thereafter to the Premises with their original full force and effect as if never terminated.

## 7. Notice

Any demand, notice or request by either party to the other shall be sufficiently given if in writing delivered to the party intended to receive the same, or if mailed by certified mail, return receipt requested, or delivered to a recognized national courier, or if given in a manner sufficient for legal process. Each notice to the Owner named above shall be addressed to such party at the Owner's Address set forth above, or to such other address as may be stated in a notice given as herein provided. Each notice to subsequent Owners shall be sufficiently given if addressed to or given at the Residence. Notices to the Covenant Holder, to be valid, must be correctly and sufficiently addressed to Board of Selectmen, Town of Stow, 380 Great Road, Stow, MA 01775-2127.

## 8. Term; Termination

8.1. Term. This Covenant shall be binding upon each Owner, and all heirs, successors and assigns, for the benefit of, and enforceable by the Covenant Holder and its successors and assigns for the maximum duration permitted by law with the approval of the Commonwealth of Massachusetts, pursuant to General Laws, Chapter 184, Sections 31-33, and absent such approval, for a period of thirty (30) years from the date of this Covenant and for such further

time thereafter (up to 99 years) as this Covenant may be lawfully extended (including without limitation extensions permitted under General Laws, Chapter 184, Section 27-30).

8.2. Certificate of Termination. Within a reasonable time of receipt of written request, the Covenant Holder will issue a certificate in recordable form stating (if such be the case) that this Covenant has been terminated, and any such certificate, when recorded with the Middlesex Registry of Deeds, shall be binding and conclusive on the Covenant Holder and all persons relying thereon.

8.3. Payment on Termination. When this Covenant terminates for whatever reason (such as mortgage foreclosure or by operation of law) other than expiration of the agreed period of restriction, the Owner shall owe the Covenant Holder the amount equal to the difference between (i) the fair market value of the Premises free of the restrictions imposed by this Covenant, and (ii) the Fair Market Value of the Premises subject to the restrictions imposed by this Covenant (assuming the same to be perpetual for such purpose), but not less than all sums, with interest at annual rate of \_\_\_\_\_% compounded annually, paid by the Covenant Holder for the purpose of making the Premises Affordable Housing (the "Affordable Housing Subsidy"). The parties agree that as of this date the Affordable Housing Subsidy is \$ \_\_\_\_\_. Fair market value (both subject to and free of the restrictions imposed by this Covenant) shall be determined by the Covenant Holder through its Assessing Department or other qualified municipal staff; provided however, that after notice to the Covenant Holder, given before or after determination by the Covenant Holder, the Owner may obtain an appraisal at the Owner's expense from a qualified appraiser approved by the Covenant Holder to determine fair market values for these purposes, whose decision shall be binding on the parties. Payment shall be made out of the proceeds from or on account of the Premises (such as sales proceeds, foreclosure proceeds or insurance proceeds) received at the time of, or next following, such termination after discharge of mortgages and other liens senior to this Covenant and shall be paid after payment (net of such mortgage and other lien payments) of the Fair Market Value of the Premises as restricted to the Owner and as if perpetual. In no event shall the Owner be personally liable to pay the Covenant Holder more than the amount, determined as stated above, actually received from or on account of the Premises as stated above.

## **9. Appointment of Agent; Appointment of Covenant Holder**

The Covenant Holder may from time to time appoint and revoke the appointment of one or more persons (who may but need not be municipal employees and who may be natural or legal persons) who shall have the authority to issue certificates as provided herein and to exercise the appointor's other rights under this Covenant to the extent stated in such Certificate. Such appointments shall be made (or revoked) only by instrument duly executed by the appointor and recorded in the Middlesex District Registry of Deeds, and each such action shall be effective only upon recording. No such instrument of appointment or revocation of appointment shall be effective unless it expressly refers to this Covenant. Only the Covenant Holder may appoint a Covenant Holder, and no appointee shall be a Covenant Holder unless the same is stated in the recorded certificate. As of the date of execution of this Covenant, the Covenant Holder is \_\_\_\_\_ and such certificates shall be signed by \_\_\_\_\_.

## 10. Miscellaneous

10.1. Covenants Run with the Land. All covenants, rights and restrictions set forth in this Covenant shall run with the real property constituting or including the Premises for the purpose of maintaining the Residence as Affordable Housing throughout the Term of this Covenant.

10.2. Public Purpose. The Covenant Holder declares, and the Owner and each other person, including mortgagees, hereafter holding any interest in the Premises acknowledges, that the reservation and grant of the covenants, and restrictions contained in this Covenant are for public purposes.

10.3. Releases. Except as expressly authorized in this Covenant (for instance, as to Certificates of Compliance or waivers), no release of or other change in the rights of the Covenant Holder contained in this Covenant shall be effective unless it is in writing and duly executed by the Covenant Holder or an authorized agent (including without limitation the Covenant Holder) as stated above.

10.4. Severability. If any provision of this Covenant or the application thereof to any person or circumstances is held to be invalid or unenforceable by any decision of any court of competent jurisdiction, such decision shall not impair or otherwise affect any other provision of this Covenant, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable.

10.5. Interpretation. This Covenant shall be enforceable according to its terms, is subject to the general principles of equity, fairness and reasonableness irrespective of whether such enforcement or interpretation is considered in a proceeding at equity or in law and shall be construed according to its purpose of fostering and preserving Affordable Housing.

10.6. Successors Bound. This Covenant shall be legally binding on, as the obligations of, the parties and their respective successors and assigns, including without limitation successors in title or interest to the Premises, who by their acceptance of any ownership interest in the Premises shall be deemed to have agreed to perform and observe all the Owner's obligations under, and to be bound by all the terms and condition of, this Covenant.

This Covenant shall take effect as a sealed instrument as of this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\*owner signature\*

COVENANT HOLDER

By: \_\_\_\_\_

Approved as to Form: \_\_\_\_\_

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

\*date\*

Then personally appeared the above-named \*owner\*, and acknowledged the foregoing instrument to be his / her free act and deed, before me

\_\_\_\_\_  
Notary Public  
My Commission Expires \_\_\_\_\_

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

\*date\*

Then personally appeared the above-named \_\_\_\_\_, and acknowledged the foregoing instrument to be his / her free act and deed and the free act and deed of said Covenant Holder of Stow, before me

\_\_\_\_\_  
Notary Public  
My Commission Expires \_\_\_\_\_

**EXHIBIT A**  
**LEGAL DESCRIPTION**

**KUN386**

**MORTGAGE**  
**SECURING OBLIGATIONS UNDER A CERTAIN**  
**AFFORDABLE HOUSING COVENANT**  
 for \_\_\_\_\_, Stow, MA  
 (CHAPA Model Form - 3/00)

OWNER - \_\_\_\_\_

OWNER'S ADDRESS - \_\_\_\_\_, Stow, Massachusetts \_\_\_\_\_.

COVENANT HOLDER - \_\_\_\_\_

COVENANT HOLDER 'S ADDRESS - \_\_\_\_\_.

THE OBLIGATIONS - All the Owner's obligations set forth in that certain Affordable Housing Covenant dated \_\_\_\_\_ recorded herewith in the Middlesex Registry of Deeds as instrument \_\_\_\_\_ of \_\_\_\_\_, Book \_\_\_\_\_, Page \_\_\_\_\_ (the "Affordable Housing Covenant")

THE MORTGAGED PREMISES - The land, building and other improvements now or hereafter thereon located at \_\_\_\_\_, Stow, Middlesex County, Massachusetts, as more completely described in Exhibit A hereto, together with all rights and easements now or hereafter appurtenant thereto and all fixtures now or hereafter on the Mortgaged Premises insofar as the same are a part of the realty.

Capitalized words or phrases not defined in this Mortgage have the meaning ascribed to them in the Affordable Housing Covenant.

In consideration of the benefits of the Affordable Housing Covenant, and for other valuable consideration paid, the receipt and sufficiency of which is acknowledged, the Owner hereby grants the Mortgaged Premises to the Covenant Holder WITH MORTGAGE COVENANTS to secure the Obligations.

This Mortgage shall in all events be subordinate to any other mortgage now or hereafter on all or any portion of the Mortgaged Premises which secures the repayment of funds loaned to purchase the Mortgaged Premises (or to refinance any such mortgage) or for other purposes which comply with the Affordable Housing Covenant. On written request, the Covenant Holder shall confirm such subordination in a recordable instrument.

The Owner covenants and agrees that the CONDITION of this Mortgage is that the Owner, and all other persons now or hereafter owning all or any part of the Mortgaged Premises faithfully performs and observes the Obligations.

KUN387

For any breach of such condition continuing uncured for such period as is specifically stated in the Affordable Housing Covenant with respect thereto (and for ninety (90) days after notice if none is stated), the Covenant Holder shall have the STATUTORY POWER OF SALE.

In event foreclosure of any prior mortgage extinguishes the Affordable Housing Covenant, or the Affordable Housing Covenant terminates for whatever reason other than expiration of the agreed period of restriction, this Mortgage shall also secure repayment to the Covenant Holder of the amount equal to the difference between (i) the fair market value of the Mortgaged Premises, free of the restrictions on ownership and occupancy imposed by this Covenant, and (ii) the Fair Market Value of the Mortgaged Premises, subject to the restrictions imposed by this Covenant as if perpetual, but not less than all sums, with interest at annual rate of \_\_\_\_\_% compounded annually, paid by the Covenant Holder for the purpose of making the Mortgaged Premises Affordable Housing (the "Affordable Housing Subsidy"). The parties agree that as of this date the Affordable Housing Subsidy is \$\_\_\_\_\_.

**In no event shall any Owner of the Mortgaged Premises, or any other person, be personally responsible to repay all or any portion of the Affordable Housing Subsidy, or any interest thereon, or any costs or expenses under this Mortgage (such as but not limited to costs and expenses of foreclosure), and the Covenant Holder agrees to look solely to the Mortgaged Premises for payment thereof, except for recovery of funds wrongfully derived by the Owner from the Mortgaged Premises in violation of the Affordable Housing Covenant.**

EXECUTED as a sealed instrument under Massachusetts law this \*date\*.

\*owner signature\*



COMMONWEALTH OF MASSACHUSETTS

\*date\*

Then personally appeared the above-named \*owner\*, and acknowledged the foregoing instrument to be his / her free act and deed, before me

\_\_\_\_\_  
Notary Public  
My Commission Expires\_\_\_\_\_

KUN389

**EXHIBIT A**  
**LEGAL DESCRIPTION**

Attachment 1-7.2MONITORING SERVICES AGREEMENT

THIS AGREEMENT is made as of the \_\_\_\_\_ day of, \_\_\_\_\_ 2003, by and between The Trust for Public Land, a California non-profit corporation having a usual place of business at 33 Union Street, Boston, MA 02108 ("TPL") and the Town of Stow with an address at 380 Great Road, Stow, MA 01775 ("Monitoring Agent").

Background

Developer, a California non-profit corporation, will develop one (1) single-family ownership unit (the "Unit") on property located at 142 Red Acre Road, Stow, MA. 142 Red Acre Road is currently owned by the Trust for Public Land (the "Property" as more fully described in Exhibit A attached hereto and incorporated herein).

Pursuant to a deed rider recorded with the deed to the Property, dated \_\_\_\_\_, and recorded with the Middlesex County Registry of Deeds in Book \_\_\_\_\_, Page \_\_\_\_\_ (the "Property Deed Rider"), this unit is required to be sold to a family whose income is below 80% of the median household income for the Boston Metropolitan Statistical Area set forth in or calculated pursuant to regulations promulgated by DHCD (the "Affordable Unit"). In addition, the Affordable Unit will be subject to a deed rider governing resale (the "Affordable Housing Covenant") in perpetuity.

Pursuant to requirements of the Property Deed Rider, the Monitoring Agent has agreed to perform monitoring and enforcement services regarding the initial sale of the Affordable Unit and compliance of the Project with the Affordable Housing Covenant.

Agreement

The parties, intending to be legally bound, agree as follows:

1. Monitoring Services. Monitoring Agent shall monitor the initial sale of the Affordable Unit and compliance of the Project with the Affordability Requirement, including:

- (i) Review of the substantive compliance of the Project with the Affordable Housing Covenant.
- (iii) Review of Unit Deed and deed rider with respect to initial sale of Affordable Unit.
- (iv) Monitoring of re-sales of Affordable Unit for compliance with the terms of the applicable deed riders and issuance of certifications, as appropriate, approving re-sales and the payment of recapture amounts.

The Monitoring Agent may provide reasonable supplemental monitoring on its own initiative in order to ensure to the extent practicable the compliance of the Affordable Unit owners and the Developer with the Affordable Housing Covenant. The services under this Agreement shall not include any construction period monitoring. The services under this Agreement shall include follow-up discussions with the Developer or Affordable Unit owner(s), if appropriate, after an event of noncompliance.

[Proposed Form of Agreement]

KUN391

## 2. Enforcement Services.

Prior to the initial conveyance of an Affordable Unit:

- (a) the Monitoring Agent shall have the right, at its discretion, to take appropriate enforcement action against the Developer, including, without limitation, notice to DHCD to compel the Developer to comply with the requirements of the Affordable Housing Covenant.
- (b) Developer shall pay the fees and expenses (including legal fees) of the Monitoring Agent with respect to such Affordable Unit(s) in the event such enforcement action is taken against the Developer, and
- (c) the Monitoring Agent shall be entitled to seek recovery of its fees and expenses incurred in enforcing the Affordability Requirement against the Developer and to seek an attachment of the interest of the Developer in the Project in connection with any action to recover its fees and expenses, and to assert a lien on any interest of the Developer in the Project.

After the initial conveyance of an Affordable Unit:

- (x) in the event of a violation of the provisions of a Unit Deed rider, the Monitoring Agent shall have the right, at its discretion, to take appropriate enforcement action against the Affordable Unit owner or such owner's successors in title, including, without limitation, notice to DHCD or legal action to compel the such unit owner to comply with the requirements of the Affordable Housing Covenant and
- (y) the Monitoring Agent shall be entitled to seek recovery of its fees and expenses incurred in enforcing an Affordable Housing Covenant against the Affordable Unit owner or such owner's successors in title and in any action against the Affordable Unit owner or such owner's successors in title and to seek an attachment of the relevant Affordable Unit to secure payment of such fees and expenses and to assert a lien against the Affordable Unit as provided in the deed rider.

The form of Affordable Housing Covenant will provide for payment by the unit owner of fees and expenses (including legal fees) of the Monitoring Agent in the event enforcement action is taken against the unit owner thereunder or under this Agreement.

The Monitoring Agent shall not be entitled to seek any compensation or reimbursement from DHCD or Developer (except as provided herein) in connection with the enforcement services under this Section 3, it being understood that the Monitoring Agent shall look solely to the reimbursement rights described above for payment of the Monitoring Agent's costs and expenses.

4. Term. The monitoring services are to be provided until such time that the Monitoring Agent, in collaboration with DHCD creates a new monitoring entity, which shall occur upon the initial sale of the Affordable Unit conveyed by the Developer.

5. Responsibility of Monitoring Agent. The Monitoring Agent shall not be held liable for any action taken or omitted under this Agreement so long as it shall have acted in good faith and without gross negligence.

6. Applicable Law. This Agreement, and the application or interpretation of this Agreement, shall be governed by the laws of The Commonwealth of Massachusetts.

**[Proposed Form of Agreement]**

7. Binding Agreement. This Agreement shall be binding on the parties to this Agreement, their heirs, executors, personal representatives, successors and assigns. In the event that the Monitoring Agent shall cease to exist, then a successor Monitoring Agent may be appointed by DHCD.

8. Headings. All paragraph headings in this Agreement are for convenience of reference only and are not intended to qualify the meaning of the paragraph.

IN WITNESS WHEREOF, the parties to this Agreement have caused this Agreement to be duly executed as of the date first written above.

The Trust for Public Land

By: \_\_\_\_\_  
Craig A. MacDonnell, Massachusetts  
State Director

The Town of Stow, Massachusetts

By: Edward R. Perry  
Edward R. Perry  
Its Chief Elected Official

Attachment 1-7.3**Marketing, Monitoring, Education and Enforcement Plan****Marketing and Buyer Selection**

The two basic elements of the Marketing and Buyer Selection plan are local preference and the buyer selection process. Each aspect of the marketing plan is described below.

**Local Preference**

The marketing plan includes local preference for the moderate-income unit. A separate pool of applicants will be maintained to address the desire for local preference expressed by the community. This local preference pool will comply with all DHCD and fair housing regulations, and will have not discriminatory or unlawful effects. The mechanics of the "local preference" pool and the "other" pool are further described in the buyer selection section.

**Buyer Selection (Lottery Process)**

The demand for this moderate-income housing unit in and around Stow exceeds the supply. Because of the disparity between demand and supply, prospective buyers will be selected using a lottery to be administered by the Town of Stow, modeled upon the recommendations of the Citizen's Housing and Planning Association (CHAPA). The lottery process will be managed by the Town of Stow subject to approval by DHCD.

The Town of Stow reserves the right to expand the Local Preference category beyond current residents, to potentially include parents and/or children of Stow residents, current employees in the Town of Stow who may not live in the town, etc. Additional outreach will be employed to attract these additional qualified applicants, including such strategies as flyers accompanying paychecks, separate mailings to municipal employees or informational sessions targeted to these employees.

*Step 1: Determining Basic Qualifications*

Below are minimum thresholds for lottery qualifications:

- Total household gross income cannot exceed 80% of the area median income as defined by the U.S. Department of Housing and Urban Development. There are different income limits, depending on household size. Annual income should include all members of the household over the age of 18 (unless full-time students) during the most recent calendar year.
- The buyer must have funds or demonstrate the ability to obtain funds for a down payment and closing costs, as determined by lending industry standards. This can be verified after the lottery result. There will likely be many more applicants than available units and it makes more sense to process down payment and mortgage qualification items for the successful lottery applicant. However, every applicant should have a lottery position (assigned a number) so that if any earlier applicants are not fully eligible, they will move up into that position.
- Household size should be appropriate for the number of bedrooms in the home. It is appropriate to set a minimum and maximum household size for the units. In this case, it may be appropriate for two bedroom homes to set a minimum household size of two persons.

- It is recommended that buyer income should be able to support at least 50% of the price of the home. No more than 50% of the purchase price should be cash.
- The Town, with guidance from DHCD, can choose to impose an asset limit. It is recommended that, at a minimum, household assets over \$5,000 be calculated as imputed income using the current HUD approved passbook rate (currently at 2%).
- Non-household members should not be permitted as co-signers of the mortgage.
- The lottery process will give preference to families of two or more over single individuals in all cases. Units with two or more bedrooms shall be prioritized for larger families requiring additional bedrooms, as follows:

First preference shall be given to families requiring the total number of bedrooms in the unit to house members of the household, based on the following criteria:

- (i) No two persons (with the exception of husband and wife, or those in a similar living arrangement) shall be required to share a bedroom;
- (ii) A person described in (i) shall not be required to share a bedroom if a consequence of sharing would be a severe adverse impact on his or mental or physical health and the lottery director receives reliable medical documentation as to such impact of sharing.

Second preference shall be given to families requiring the number of bedrooms in the unit minus one, based on the above criteria; third preference shall be given to families requiring the number of bedrooms in the unit minus two; and so on.

A "family" shall mean two or more persons who will live regularly in the unit as their primary residence and who are related by blood, marriage, law or who have otherwise evidenced a stable inter-dependent relationship.

Lottery drawings shall result in each applicant being given a ranking among other applicants and larger families being prioritized for units with appropriate numbers of bedrooms based on the above criteria.

#### *Step 2: Developing Application Materials*

The developer, in collaboration with the Town of Stow, will prepare complete application materials, including an application form, application certification form, authorization for consent to release information, the Affordable Housing Covenant, a description of the threshold eligibility requirements, a clear description of the preference categories being used, and how the lottery winners will be chosen.

#### *Step 3: Advertising and Outreach*

Notices will be sent to area churches, local and regional housing agencies, local housing authorities, civic groups, lending institutions, social service agencies, and other non-profit organizations.

The Town of Stow will offer one or more information meetings for the public to educate them about the lottery process and the development. These meetings may include local officials, lottery administrators, developers, and local bank or finance officials. The date, time, and location of these meetings will be published in ads or flyers that publicize the availability of lottery applications. Meetings will be held in the evening and at least one weekend day in accessible public facilities in order to reach as many potential

applicants as possible. Attendance at a meeting will not have any effect on the approval of a lottery application.

The purpose of the meeting is to answer questions that are commonly asked by lottery applicants. A town official will be available to describe the town's role in the affordable housing project, and the lottery administrator will explain the information requested on the application and answer questions about the lottery drawing process. The developer will be present at the initial lottery to describe the development and to answer specific questions about the affordable unit. The Town also expects that a local banker or financial representative will be present to answer questions about qualifications for the financing of affordable units. The number of meetings will be determined by the interest in the development throughout the community.

At the meetings and through general outreach, the lottery administrator will provide application materials to lottery applicants, which outline income qualifications for the lottery, the sales prices of the affordable units, the Affordable Housing Covenant, and the process one must follow to be eligible for the lottery.

Sales prices will be "locked-in" at the time of the initial marketing of the affordable units. The prices of the homes will not be increased once the lottery process begins, even if interest rates and HUD income guidelines change during this period.

#### *Step 4: Developing and Distributing Applications*

The application period will be at least 60 days. The lottery applicants should submit all of the required materials by a deadline to be specified by the Town of Stow. The level of documentation required from the applicant will depend on whether DHCD suggests that the Town of Stow allow the applicants to "self-qualify" based on information obtained from the meeting and materials or require that applicants obtain a "pre-qualification" letter from a lender and submit income tax returns to be eligible for the lottery.

In either case, only applicants that are income eligible and who submit all required information will be entered into the lottery.

#### *Step 5: Lottery Selection*

Once all required information has been received, each qualified applicant will be assigned a number. The Town of Stow will have two drawing pools: one for at large applicants and one for local preference applicants (up to 70% of the total units).

#### *Step 6: Loan Application*

Once the lottery has been completed and all persons have been assigned a lottery number, applicants will be given a time period in which they must apply for a loan (usually three weeks). Lottery winners should be free to choose the lender of their choice. A formal loan application is made to the lender within the time limit prescribed at the meeting. The lender should determine eligibility based on the qualifications outlined in step 1 above as well as credit worthiness of the applicant.

The lender should also review the deed rider, which contains the long-term affordability restrictions.

The lender will send a preliminary approval, at which time the applicant contacts the property owner and enters into a Purchase and Sale Agreement. The executed Purchase and Sale Agreement is submitted to the lender who then will issue a firm financing commitment.



*Step 7: Final Qualification*

Prior to a Purchase and Sale Agreement being executed, the developer or lender should submit each applicant's income documentation of the applicant to the monitoring agent. Income verification should include tax returns from the past year and five most recent pay stubs. The monitoring agent will then verify that the household's income does not exceed 80% of the area median income according to household size. The developer should also submit the signed deed rider to the monitoring agent. The deed rider restricts the resale price of the home so that it will remain affordable in the future.

*Step 8: Execute a Purchase and Sale Agreement*

Once the monitoring agent has approved the applications, the property owner and the homebuyer execute a purchase and sale agreement for each affordable home.

Item 1-8: Anti-Displacement and Relocation Assistance Plan/ Form 1-9 MA CDBG Program Anti-  
Displacement & Relocation Assistance Certification

When purchased by the developer (The Trust for Public Land), the unit will be vacant. The project involves a single homeownership unit that will not involve displacement at any time. No displacement or relocation is required as part of this project, and therefore an Anti-Displacement and Relocation Assistance Plan is not required.

### 1-10 Citizen Participation Plan

Development of the Kunelius Farm Project began in November of 2002. It is a testament to the soundness of the plan and its community based support that the initial concept has not been modified since its inception. The conversion and sale of an existing .93 acre parcel with 2 bedroom house as deed restricted affordable in perpetuity has been presented at numerous town committee meetings, a Special Town Meeting, and at an Open Hearing. This section will describe the wide range of local audiences that has provided feedback during the project's development and will project a plan for further community input upon grant funding.

#### **Community Participation: A Summary**

Neighborhood citizens learned in late October 2002 that the Town of Stow had a right of first refusal to purchase the properties of 142 and 144 Red Acre Road that had recently been put under a single contract for a housing development. On November 12, 2002, 15 citizens attended a Board of Selectmen meeting and convinced the Board to defer their decision to waive that right to give the group more time to develop an alternative proposal.

On November 16, 2002, a neighborhood group of sixteen Stow residents met to begin developing this plan. The minutes of this meeting clearly identified affordable housing in perpetuity as something that the town needs.

Subsequently, four community members then canvassed Red Acre Road and invited neighbors to a second meeting to "brainstorm" on the best possible project and how it should be implemented. Over 35 people attended that second meeting on November 23, 2002. The local citizens group called itself Friends of Red Acre (FORA). Throughout the meetings and the canvassing of the neighborhood neighbors and citizens fully supported the conversion of two houses to deed restricted affordable in perpetuity. Those residents that directly abut the subject houses continue to actively support this project (See Exhibit 5, Evidence of Local Support).

Members of FORA attended meetings of the Stow Housing Task Force and spoke with members of the Stow Housing Authority and with staff members of the Massachusetts Department of Housing and Community Development. The purpose of this outreach was to verify that this plan for affordable housing met the needs of the Town of Stow and to learn about the procedures and requirements for renovating, writing the deed restrictions, and selling the house at 142 Red Acre Road.

#### **Presentations to the Town**

FORA made a presentation to the Planning Board on November 19<sup>th</sup> to provide project information to inform the board's recommendation to the Board of Selectmen on whether or not to waive their right of first refusal. These minutes contain the first public record that FORA recognized the town's need for affordable housing and planned to purchase the two houses and put affordable deed restrictions on them. After deliberation, the Planning Board voted unanimously to "...recommend that the Selectmen refrain from waiving the Town's option, pending further review, and development of a potential plan for purchase" (Stow Planning Board Minutes, November 19, 2002).

As noted in the minutes, dozens of citizens filled the meeting room and hallway to support FORA's presentation to the Board of Selectmen at their November 26th meeting. The Selectmen voted unanimously to let the full 120 days pass before making a decision on their right of first refusal. They also agreed to put two placeholders for articles for warrant for the Special Town Meeting to see if the town would vote to appropriate funding for this project. Also notable were comments made by a member of the

Community Preservation Committee stating that the CPC would be interested in hearing a presentation from the group once their project was better defined.

In early December, The Trust for Public Land (TPL) agreed to become involved in this project and was assigned the right of first refusal on the property by the town in mid-February. TPL has continued to work with FORA, but now assumes directorship of the project.

In preparation for the Special Town Meeting in January, the town committees met individually to review and make recommendations on the various warrant articles. TPL and FORA attended the Conservation Commission, Planning Board, Finance Committee, and Capital Planning Committee to seek their public endorsement of this project at the Special Town Meeting. Though other concerns were raised about the project, there were no concerns voiced about the conversion of the houses to deed restricted affordable. Prior to the Special Town Meeting, The Trust for Public Land made an introductory presentation to the Board of Selectmen on January 7th. There was a majority vote of the Selectmen in favor of supporting the efforts of the Trust for Public Land.

At the Special Town Meeting on January 13, 2003 the Red Acre Project's Article for Warrant asked that the town vote to go to the polls and vote in favor of a Prop. 2 1/2 override to fund \$305,000 of the Kunelius Farm Project. The project's plan to have affordable deed restrictions placed on the two houses was part of the presentation. The article passed, requiring a two-thirds majority of the voters.

#### **Open Hearing, January 28, 2003**

The Board of Selectmen met to decide whether or not to assign the right of first refusal to The Trust for Public Land. In order to obtain sufficient input from the town, the Board of Selectmen held a public hearing on January 28th. The announcement of the meeting was published in the local newspaper on January 16th.

The discussion at this meeting regarding the affordable housing component was not about the merits of the affordable housing proposal, but how The Trust for Public Land would ensure the Town of Stow that the properties would be deeded affordable. According to the minutes, "Selectman Clayton moved to transfer the Town's Right of First Refusal to the Trust for Public Land contingent upon all deliverables being received in time for Town Council to approve prior to the Board's meeting on February 11, 2003, and the offer to be rescinded if all is not received. Seconded by Selectman Burchfield and voted unanimously."

The Public Hearing was continued on February 11, 2003. At that meeting, Craig MacDonnell of The Trust for Public Land explained "...that 142 Red Acre Road would be conveyed subject to a perpetual affordability restriction if the Town votes to spend CPA funds to purchase one and a conservation restriction reasonably limiting the further development of the property. Any sale of the property would be coordinated with a local preference lottery and would be subject to all appropriate law and regulation."

The Selectmen voted to approve the following:

- that the Town transfer its Right of First Refusal under Chapter 61 to the Trust for Public Land and ratifying the vote taken at the January 28, 2003 meeting.
- that the Board support an article at ATM (Annual Town Meeting) in which funds from the CPA will be used for affordable housing and open space at 142-144 Red Acre Road.

- to inform the Zoning Board of Appeals of this Board's approval of the Red Acre Road planned project.

### **Preparing for Annual Town Meeting**

On February 10th, The Trust for Public Land made a formal presentation to the Community Preservation Committee. At that meeting, the CPC voted to recommend that \$400,000 of CPA funds be expended on that project by borrowing against the existing funds over two years. \$100,000 of that amount would be from CPC funding set aside for affordable housing.

### **Management of Affordable Housing Project Component**

Upon the sale of 142 Red Acre Road to The Trust for Public Land, the property will be vacated by the owner and no existing tenant will be displaced during the renovation and sale of the house.

The Trust for Public Land will seek to keep the public apprised of the project's progress and seek input on how the project should proceed. Stow is a small town of 2,082 households (Census 2000). The Stow Housing Authority, under direction of the Board of Selectmen, will be closely involved with this project and help to determine the public input process through scheduled meetings and Open Hearings. TPL and the Town of Stow will rely on the Housing Authority's ability to involve the community members that represent the needs of those of low and moderate income.

The Town of Stow will arrange for technical assistance through the Housing authority to help coordinate the provision of technical assistance to groups who represent low and moderate income persons throughout the grant term;

The grant management consultant, in conjunction with TPL, will hold at least one public hearing to review program performance during the grant year.

Procedures for the resolution of complaints and grievances will be consistent with those already in place in the Town of Stow, and in use by the Stow Housing Authority.

Throughout the process, handicapped residents will be provided for by holding all public meetings in accessible locations. Both the Stow Town Offices and Stow Housing Authority are handicap accessible. Non-English speaking residents will be accommodated as much as possible given the capacity of the Town of Stow. Whenever necessary, assistance will be sought to accommodate non-English speaking persons during the citizen participation process.

KUN401

## Federal FY 2002 Massachusetts CDBG Program

**PUBLIC HEARING DOCUMENTATION**  
(Form 1-11)**PUBLIC HEARING INFORMATION:**Date/Time Held: January 28, 2003, 8:00 pm; February 11, 2003, 9:00 pmNumber of Attendees: Approximately 35Location: Stow Town Building, 380 Great RoadHearing Officer: Chairman, Board of Selectmen, Edward R. PerryHearing Outreach: Beacon-Villager, Circulation of 3,500 Weekly

(List all sources)

Posted in Town BuildingDates Published: 1/16/03How Published? Newspaper, Public Posting in Town Building**HEARING NOTICE AND MINUTES DOCUMENTATION:**

Attach a copy of the public hearing notice as it appeared in the newspaper(s) listed above, or a copy of the notice as was posted in the appropriate public buildings. In addition, you must attach a copy of the minutes from the public hearing.

**Attachment 1-11.1 Public Hearing Notice****Attachment 1-11.2 Public Hearing Minutes****Attachment 1-11.3 List of Attendees at Public Hearing**

KUN402

## LEGAL NOTICES

<p><b>MAURA ESTATES</b> <b>LEGAL NOTICE</b> <b>NOTICE OF PUBLIC HEARING</b></p> <p>The Town Planning Board will hold a public hearing on February 11, 2003, at 7:30 P.M. in the Stow Town Building, 38½ Green Road, Stow, MA, to discuss a proposed Amendment to the Certificate of Action for Road A of the Maura Estates Definitive Subdivision, as petitioned by Forest Engineering Associates, Inc. Road A, owned by Trustees of Boston College and Nancy Nyhan, is located off Taylor Road as shown on Property Map Sheet H-7. Plans may be viewed at the Office of the Planning Board or the Office of the Town Clerk during normal business hours.</p> <p>Donald G. McPherson, Chairman</p> <p>AD#135723 Beacon Villager 1/16, 1/23/03</p>	<p>singular the premises described in said mortgage.</p> <p><b>TO WIT:</b></p> <p>That certain parcel of land with the buildings thereon, situated on the Easterly side of Red Acre and the Northerly side of Summer Street, in Stow, Middlesex County, Massachusetts, and being shown on a plan entitled, "Land in Stow owned by the Estate of John Wanhatalo", surveyed by Horace F. Tuttle, C.E., dated January 11, 1955, recorded as Plan No. 85 of 1955 in Middlesex South District Registry of Deeds, Book 8398, Page 244, bounded and described as follows:</p> <p><b>WESTERLY</b> by Red Acre Road, one hundred eighty-five and 8/10 (185.8) feet;</p> <p><b>SOUTHWESTERLY</b> by said Road and the Old County Road to Lancaster, twentyseven and 2/10 (27.2) feet;</p> <p><b>SOUTHERLY</b> by said Old County Road by three courses, one hundred twenty-five and 4/10 (125.4) feet, seventy and 65/100 (70.65) feet, and thirty-three and 82/100 (33.82) feet.</p> <p><b>SOUTHEASTERLY</b> by said Old County Road, thirty-six and 2/10 (36.2) feet.</p> <p><b>SOUTHEASTERLY</b> by Summer Street, one hundred fifty-five and 45/100 (155.45) feet.</p> <p><b>EASTERLY</b> by land of the Estate of John Wanhatalo, two hundred and fifty-six (256) feet.</p> <p><b>NORTHERLY</b> by land formerly of Mrs. Bass, one hundred forty-six and 7/10 (146.7) feet;</p> <p><b>WESTERLY</b> by land of Ralph G. Moody, one</p>	<p>hundred and twenty-four (124) feet;</p> <p><b>NORTHERLY</b> by said Moody land, one hundred and forty-five (145) feet,</p> <p><b>EASTERLY</b> by said Moody land, fifty-one (51) feet, and</p> <p><b>NORTHERLY</b> by said Moody land, ninety-nine (99) feet.</p> <p>Containing according to said Plan two (2) acres, more or less.</p> <p>Said premises are conveyed subject to rights of way of record.</p> <p>For mortgagors' title see deed recorded with Middlesex County (Southern District) Registry of Deeds in Book 27783, Page 9.</p> <p>These premises will be sold and conveyed subject to and with the benefit of all rights, rights of way, restrictions, easements, covenants, liens or claims in the nature of liens, improvements, public assessments, any and all unpaid taxes, tax titles, tax liens, water and sewer liens and any other municipal assessments or liens or existing encumbrances of record which are in force and are applicable, having priority over said mortgage, whether or not reference to such restrictions, easements, improvements, liens or encumbrances is made in the deed.</p> <p><b>TERMS OF SALE</b></p> <p>A deposit of Five Thousand (\$5,000.00) Dollars by certified or bank check will be required to be paid by the purchaser at the time and place of sale. The balance is to be paid by certified or bank check at Harmon Law Offices, P.C., 150 California Street, Newton, Massachusetts 02458, or by mail to P.O. Box 610389, Newton Highlands,</p>	<p>Massachusetts 02461-0389, within thirty (30) days from the date of sale. Deed will be provided to purchaser for recording upon receipt in full of the purchase price. The description of the premises contained in said mortgage shall control in the event of an error in this publication.</p> <p>Other terms, if any, to be announced at the sale.</p> <p><b>BANK ONE, NATIONAL ASSOCIATION, AS TRUSTEE</b> Present holder of said mortgage.</p> <p>By its Attorneys, HARMON LAW OFFICES, P.C. Kristin A. Hedvig, Esquire 150 California Street Newton, MA 02458 (617) 558-0500</p> <p>AD#135400, 135401 Beacon Villager 1/09, 1/16, 1/23/03</p>
<p><b>SHOEMAKER</b> <b>LEGAL NOTICE</b> <b>NOTICE OF MORTGAGEE'S SALE</b> <b>OF REAL ESTATE</b></p> <p>By virtue and in execution of the Power of Sale contained in a certain mortgage given by Philip P. Shoemaker Jr. and Michele L. Shoemaker to Source One Mortgage Corporation, dated July 11, 1999, and recorded with the Middlesex County, (Southern District) Registry of Deeds at Book 30408, Page 409, of which mortgage Bank One, National Association, as Trustee is the present holder by assignment, for breach of the conditions of said mortgage and for the purpose of foreclosing, the same will be sold at Public Auction at 11:00 a.m. on February 3, 2003, on the mortgaged premises located at 5 Red Acre Road, Stow, Middlesex County, Massachusetts, all and</p>			<p><b>142 &amp; 144 RED ACRE ROAD</b> <b>LEGAL NOTICE</b> <b>TOWN OF STOW</b> <b>NOTICE OF PUBLIC HEARING</b></p> <p>The Board of Selectmen will hold a public hearing on <b>Tuesday, January 28, 2003, at 7:30 pm</b>, in the Stow Town Building, Stow, Massachusetts, for public input regarding assigning the Right of First Refusal to Trust For Public Land, a nonprofit conservation organization, pursuant to Massachusetts General Laws, Chapter 61, Section 8, as it relates to the Kunelius property located at 142 and 144 Red Acre Road, Stow, MA.</p> <p>AD#138197 Beacon Villager 1/16/03</p>

KUN403



**Town of Stow**  
**BOARD OF SELECTMEN**  
**380 Great Road**  
**Stow, Massachusetts 01775-1122**  
(978) 897-4515  
FAX (978) 897-4534

January 28, 2003

**Public Hearing – Transfer of Right of First Refusal**

At 8:00pm, Selectman Perry opened the public hearing by reading the public hearing notice.

Mr. David Cobb, representing the Friends of Red Acre, and Mr. Craig MacDonnell, representing The Trust for Public Land (TPL), were in to inform the Board that they are still gathering information in their assistance to help the Friends of Red Acre to accept the transfer of Right of First Refusal if offered by the Town.

Although The Trust for Public Land does qualify under statute as a non-profit organization to accept this right, they are not sure, at this point, if they can meet all the financial demands to accept the offer of Right of First Refusal.

Selectman Perry has requested of TPL to submit legal documentation of how they intend to deed the property, that the two houses on the property will be deeded affordable and a promissory of deliverables before the Board considers transferring their rights. The Board is also looking for language that clearly establishes the Town's right to the 42 acres of backland together with our right to access this land for the purposes of building and maintaining a drinking water well and an indemnification clause in the agreement that requires that TPL defend and hold harmless the Town against any third party claims.

Mr. MacDonnell stated that he has not been in the two homes and is unaware of what it will take financially to make them livable and will need to research that. He also stated that there would be slightly more than 42 acres deeded to the Town but didn't feel the Trust for Public Land would agree to defend and hold harmless the Town against future claims.

Selectman Clayton moved to transfer the Town's Right of First Refusal to The Trust for Public Land contingent upon all deliverables being received in time for Town Council to approve prior to the Board's meeting on February 11, 2003, and the offer to be rescinded if all is not received.

Seconded by Selectman Burchfield and voted unanimously.

The Public Hearing will continue on February 11, 2003.

**KUN404**





**Town of Stow**  
**BOARD OF SELECTMEN**  
**380 Great Road**  
**Stow, Massachusetts 01775-1122**

(978) 897-4515  
 FAX (978) 897-4534

**Right of First Refusal – Kunelius property**

At 9:00pm Selectman Perry re-opened the public hearing on transferring the Town's Right of First Refusal on the Kunelius property.

Craig MacDonnell of the Trust For Public Land (TPL) was present to offer the Board a summary of conditions under which TPL would consider accepting the proposed assignment. Mr. MacDonnell explained that although TPL has not had the opportunity to access the property, he is requesting a recorded vote by the Community Preservation Committee and the Board of Selectmen to support an

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February 11, 2003

article on the Annual Town Meeting (ATM) warrant to spend Community Preservation Act (CPA) funds for affordable housing and open space. They are also requesting a recorded vote of the Board of Selectmen to support the variance required for the subdivision of the property.

Mr. MacDonnell stated that an agreement in principle that the deeds to the private parcels would include certain provisions and the sales of the properties would be restricted in certain respects. He went on to explain that 142 Red Acre Road would be conveyed subject to a perpetual affordability restriction if the Town votes to spend CPA funds to purchase one and a conservation restriction reasonably limiting the further development of the property. Any sale of the property would be coordinated with a local preference lottery and would be subject to all appropriate law and regulation.

He went on to explain that 144 Red Acre Road would be conveyed subject to a conservation restriction reasonably limiting (a) further development of the property allowed under existing zoning and (b) agricultural and animal husbandry activities that pose direct threats to the aquifer.

Regarding the possibility of a municipal well, TPL will need to negotiate terms of access for purposes of construction, operation and maintenance of future water supply facilities and for the potential development of a water line from the farm pond to a hydrant for purposes of fire suppression that may be developed on the adjacent parcel.

**KUN405**

Mr. MacDonnell stated that as a condition of Eye of the Storm buying the parcel at 144 Red Acre Road, a perpetual affordability restriction will be imposed if the Town votes to purchase one.

Selectman Jones moved that the Town not transfer their rights under Chapter 61 to the Trust for Public Land. There was not a second to this motion. No action on the motion.

Selectman Farrell moved that the Town transfer its Right of First Refusal under Chapter 61 to the Trust for Public Land and ratifying the vote taken at the January 28, 2003 meeting. Seconded by Selectman Burchfield. Discussion ensued with Selectman Farrell stating that she feels she represents the interests of the entire community by offering this parcel to TPL. Selectman Burchfield stated that she feels the questions given to TPL by Selectman Perry have been answered to her satisfaction. Selectman Perry stated that he feels that his concerns have been answered and the transfer is the wish of the Town voters. Selectman Jones stated that he feels that transferring the Town's rights unconditionally is not reasonable and is against the idea because of the risks involved. Selectman Perry ended the discussion by saying that TPL is a national entity and feels that this is a risk worth taking. The motion carried by a 3-1 vote with Selectman Jones voting in opposition.

Selectman Burchfield moved that the Board support an article at ATM in which funds from the CPA will be used for affordable housing and open space at 142-144 Red Acre Road. Seconded by Selectman Farrell. The motion carried by majority with Selectman Jones abstaining from the vote.

Selectman Farrell moved to recommend supporting the frontage variance needed to support TPL's plan for division of the property. Seconded by Selectman Burchfield. Discussion ensued and Mr.

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February 11, 2003

Wrigley suggested that the Board may not want to make a decision to weigh on the deliberation of another Board and that this Board should not ask the Zoning Board of Appeals to recommend or influence their decision on a variance as there is no negotiation on a variance. The motion did not carry with a 1-3 vote with Selectmen Perry, Jones and Burchfield voting in opposition.

Selectman Farrell moved to inform the Zoning Board of Appeals of this Board's approval of the Red Acre Road planned project. Seconded by Selectman Burchfield and carried by a majority vote. Selectman Jones abstained from voting.

Selectman Perry closed the Public Hearing.

KUN406

Attachment 1-11.3

List of Attendees at Public Hearing:

Ross Perry, Chair of Board of Selectmen  
Greg Jones, Board of Selectmen  
Shirley Burchfield, Board of Selectmen  
Kathleen Farrell, Board of Selectmen  
Bill Wrigley, Town Administrator  
Paula Bruno, Board of Selectmen Admin Assistant  
Linda Hathaway, Town Clerk  
Stephanie Doss, Mosaic Commons  
Peter Kachagian, seller's attorney  
Jim Boothroyd, seller's realtor  
Chris LaPointe, Trust for Public Land  
Craig MacDonnell, Trust for Public Land  
Matt Gunderson, Beacon Villager Reporter  
Bob Wilber, Chair of the Stow Community Preservation Committee  
John Beusch, Stow Resident, Director of Stow Conservation Trust  
Rob Bowers, Stow Resident, Board Member of Stow Conservation Trust  
Tom Maher, Stow Resident  
Peter Mills, Stow Resident  
Karen Gray, Stow Resident  
Nina Arbella, Stow Resident  
Janet Burge  
Tim Reed  
David Cobb  
Karen Sommerlad  
Sharlet Ramsland  
Drew Simmons  
Erica Nilsson  
Michael Labosky  
Allan Fierce  
Serena Furman  
Peter Christianson  
John Browne  
Victor Castelline  
Peter McManus  
Kate McManus

KUN407

**Chief Elected Official Certifications (Form 1-14)****MASSACHUSETTS CDBG PROGRAM****CHIEF ELECTED OFFICIAL (CEO) CERTIFICATION FORM**

On behalf of the applicant, of which I am a duly authorized local official empowered to sign such documents, I certify that the following actions have or will be taken:

1. The applicant possesses the legal authority to make a grant submission.
2. The applicant will minimize displacement resulting from CDBG-funded projects whenever possible, and comply with relocation requirements governing the CDBG program.
3. The project will be conducted in accordance with Title VI and Title VIII of the Civil Rights Act and, further, the applicant will affirmatively further fair housing.
4. The applicant has provided opportunities for citizen participation, and has conducted a public hearing, and has provided information to citizens regarding the project that is to be submitted for CDBG funding consistent with Section 104(a) (2) of Title I of the Housing and Community Development Act of 1974 as amended through 1987.
5. The applicant will not attempt to recover any capital costs of public improvements assisted in whole or in part with CDBG funds by assessing properties owned and occupied by low and moderate persons unless: (A) CDBG funds are used to pay the portion of such assessment that relates to non-CDBG funding or; (B) the applicant certifies to the State that, for the purposes of assessing properties owned and occupied by low and moderate income persons who are not very low income, the applicant does not have sufficient CDBG funds to comply with the provisions of "A" above.
6. In applying for this grant from the Massachusetts Small Cities Program, the applicant understands that its Chief Elected Official is ultimately responsible for compliance with all requirements of the Program, including providing sufficient management oversight to carry out the activities requested hereunder.

**Certification Regarding the Use of Force**

The Community further certifies that:

1. The applicant will adopt/has adopted and will enforce a policy to prohibit the use of excessive force by law enforcement agencies within their jurisdiction against any individuals engaged in nonviolent civil rights demonstrations.
2. The policy to be adopted or has been adopted is contained in:
  - a. a local legislative act (such as an ordinance); or
  - b. a local administrative act (such as a written statement of policy by the local chief executive); or
  - c. an executive order; or
  - d. a regulation within the police department.
3. The community understands that a new policy need not be adopted if they have and are enforcing a written policy that meets the requirements of Section 519 of the Housing and Community Development act of 1974, as amended.

### Certification Regarding Assistance to Primarily Religious Organizations:

The Community further certifies that:

1. Community Development Block Grant [CDBG] funds shall not be provided to primarily religious organizations, such as churches, for any activities including secular activities, or to rehabilitate or construct housing owned by primarily religious organizations or assist primarily religious organizations in acquiring housing. CDBG funds may be provided to a wholly secular entity established by a religious organization, provided that the program or housing receiving assistance is wholly secular in purpose and is available to all persons regardless of religion.

### Certification Regarding Lobbying

The Community further certifies that:

1. No federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, or renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an employee or officer of congress, or an employee of a member of congress in connection with this shall complete and submit standard form - III, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers, (including subcontracts, sub-grants, and contracts under grants, loans and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

### Certification Regarding Disclosure Requirements for Activities Receiving \$200,000 or More

1. The undersigned shall comply with the requirements of full disclosure for any project or activity proposed for and receiving funding equal to \$200,000 or more. Disclosure will include providing information regarding:
  - assistance from other government sources in connection with the project;
  - financial interests of persons involved in the project (from planning to development to implementation of the project or activity), such financial interests exceeding \$50,000 or 10% of the project assistance requested, whichever is lower; and
  - sources and uses of other funds involved in the project.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, US Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$ 10,000 and not more than \$ 100,000 for each such failure.

By: \_\_\_\_\_

Signature, Chief Elected Official  
(Lead Applicant Only)

*Edward R Perry*

Typed Name

Title

Date

KUN410

MASSACHUSETTS CDBG PROGRAM  
CHIEF FINANCIAL OFFICER CERTIFICATION  
1-15

***Budget Summary/Administrative Cost Breakdown:***

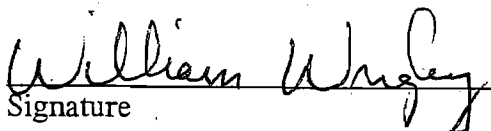
This is to certify that the Budget Summary and Administrative Cost Breakdown forms included in the City/Town of \_\_\_\_\_'s application to the Massachusetts CDBG Program have been reviewed and determined to be a fair and accurate accounting of allowable and reasonable costs.

The costs identified compare consistently with those described for each requested program activity identified in this application.

By:

Chief Financial Officer

City/Town of \_\_\_\_\_

  
Signature

Typed Name

Title

Date

KUN411

**DEPOSITION OF CRAIG MACDONNELL****MINIDEP by Kenson**

Volume: I  
 Pages: 1-251  
 Exhibits: 23

UNITED STATES DISTRICT COURT  
 FOR THE DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 05-11697-GAO

MARILYN KUNELIUS,  
 Plaintiff,

v.

TOWN OF STOW, separately,  
 A PARTNERSHIP OF UNKNOWN NAME  
 BETWEEN TOWN OF STOW and THE  
 TRUST FOR PUBLIC LAND, THE  
 TRUST FOR PUBLIC LAND, separately,  
 and CRAIG A. MacDONNELL, in his  
 individual capacity,  
 Defendants.

DEPOSITION of CRAIG MacDONNELL, a witness called by and  
 on behalf of the plaintiff, taken pursuant to the  
 Massachusetts Rules of Civil Procedure, before Roberta J.  
 Daniels, a Court Reporter and Notary Public within and for  
 the Commonwealth of Massachusetts, at the Law Offices of  
 Michael C. McLaughlin, One Beacon Street, Boston,  
 Massachusetts 02108, on Thursday, February 8, 2007,  
 scheduled to commence at 10:00 A.M.

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**A P P E A R A N C E S**

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 Counsel for Defendant Town of Stow

Dahlia S. Fetouh, Esquire  
 Goodwin Procter, LLP  
 Exchange Place  
 Boston, Massachusetts 02109  
 Counsel for Defendant Trust for Public Land

James B. Conroy, Esquire  
 Donnelly, Conroy & Gelhaar, LLP  
 One Beacon Street, 33rd floor  
 Boston, Massachusetts 02108  
 Counsel for Defendant Craig MacDonnell

Also present:  
 Lucie DeBellis, Paralegal  
 The Law Offices of Michael C. McLaughlin  
 Marilyn Kunelius, Plaintiff  
 David Norris, Husband of the plaintiff

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**DEPOSITION OF CRAIG MACDONNELL****MINI DEP by Kenson**

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**DEPOSITION OF CRAIG MACDONNELL****MINIDEP by Kenson**

1 PROCEEDINGS  
2 Thursday, February 8, 2007  
3 10:01 A.M.  
4 (Plaintiff and Mr. Norris not present)  
5 CRAIG MacDONNELL, first having been  
6 satisfactorily identified by the production of a  
7 Massachusetts driver's license and then duly  
8 sworn, on oath, deposes and says as follows:  
9 MR. McLAUGHLIN: Before we start, we'll  
10 use the usual stipulations? We'll reserve all  
11 objections till the time of trial, except as to  
12 form, waive the signature of the deposition?  
13 MR. CONROY: Waive the notary.  
14 MR. McLAUGHLIN: Yes, right.  
15 MR. CONROY: Right.  
16 DIRECT EXAMINATION  
17 By MR. McLAUGHLIN:  
18 Q Could you please state your name and spell it, please?  
19 A It's Craig MacDonnell, C-R-A-I-G. Last name is M-A-C-  
20 D-O-N-E-L-L.  
21 Q And can you tell me what your address is?  
22 A 800 Old Road to Nine Acre Corner, Concord, Mass.  
23 Q Can you tell me what your occupation is?  
24 A I work for the Trust for Public Land.

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1 A Well less than a million.  
2 Q Less than a half a million dollars?  
3 A Yes.  
4 Q Less than two hundred and fifty thousand?  
5 A Yes.  
6 Q Do you have a general idea what the limitation was?  
7 A I believe -- well, it was very small, but I don't know  
8 a number.  
9 Q Do you have a general estimation of what -- well, let  
10 me strike that.  
11 A I've already said I don't remember.  
12 Q If a contract was put in front of you, was there a  
13 point where you would say to yourself, gee, I can't  
14 sign this; this is too big?  
15 A Are we talking about now or then?  
16 Q Then.  
17 A Yes.  
18 Q And what would that number be that would cause you to  
19 think you didn't have the authority?  
20 A Well, I don't recall as to what it was then, so I  
21 can't testify to that.  
22 Q Are you on any medication that would affect your  
23 memory?  
24 A No.

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1 Q And what is the Trust for Public Land?  
2 A The Trust for Public Land is a 501c3, a national non-  
3 profit land conservation organization.  
4 Q And what do you do for them?  
5 A I'm the Massachusetts state director.  
6 Q In 2002, what was your job at TPL?  
7 A I was the Massachusetts state director.  
8 Q Does each state have a director?  
9 A Most states where TPL works have a director.  
10 Q Is there a regional headquarters for TPL for the  
11 northeast region?  
12 A Yes.  
13 Q Where is that?  
14 A Boston.  
15 Q And is that the same place as your office?  
16 A Yeah.  
17 Q And is there someone in charge of the region that you  
18 report to?  
19 A Yes.  
20 Q And who is that?  
21 A Whitney Hatch.  
22 Q Is Whitney Hatch a man?  
23 A He is.  
24 Q Whitney, okay. And what is his title?

- 7 -

1 Q Can you tell me what your background is, your  
2 educational background, please?  
3 A I'm trained as a lawyer.  
4 Q And what kind of lawyer were you trained to be?  
5 A A litigator.  
6 Q Did you practice as an attorney?  
7 A I did.  
8 Q And where did you practice?  
9 A Two law firms.  
10 Q What are the names of the two firms?  
11 A Nutter, McClennen & Fish and Keegan, Werlin & Pabian.  
12 Q Where is Keegan, Werlin, Pabian?  
13 A Boston.  
14 Q And can you tell me when you worked for these two  
15 firms, sequentially?  
16 A I worked for Nutter, McClennen & Fish from 1983  
17 through '87 or '88. I worked for Keegan, Werlin from  
18 the early '90s through the late '90s.  
19 Q Why did you leave Nutter?  
20 A To change my career.  
21 Q And you were a litigator at Nutter?  
22 A Yes.  
23 Q Were you a partner?  
24 A No.

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1 A Regional director.  
2 Q And do you still report to Whitney Hatch?  
3 A I do.  
4 Q In 2003, were you also the Massachusetts director?  
5 A In 2003, I was the Massachusetts state director.  
6 Q In your role as Massachusetts state director, could  
7 you define what your authorities were as far as  
8 acquisitions of property?  
9 A What do you mean by define my authority?  
10 Q Well, were you in a position to bind TPL into  
11 contracts, for example?  
12 MR. CONROY: Objection.  
13 A Some contracts.  
14 Q When I say in a position, did you have the authority  
15 to?  
16 A Well, in my position, there were some contracts that I  
17 could bind TPL with respect to.  
18 Q And what kind of contracts were those?  
19 A Very small.  
20 Q Was there a dollar amount limitation?  
21 A There was.  
22 Q What was that?  
23 A I don't know.  
24 Q Was it less than a million dollars?

- 8 -

1 Q Were you an associate?  
2 A Yes.  
3 Q And at Keegan, were you a partner?  
4 A Yes.  
5 Q Did you go in as a partner?  
6 A No.  
7 Q Did you go in as an associate?  
8 A I did.  
9 Q How long were you an associate there?  
10 A About three years.  
11 Q So, in the span of between approximately '90 and the  
12 late '90s, you were three years an associate and up to  
13 perhaps as many as six or seven as a partner?  
14 A Approximately.  
15 Q And what did you do between '88 and '90?  
16 A I worked for the Department of Fisheries, Wildlife &  
17 Environmental Law Enforcement.  
18 Q And what was your position there?  
19 A I was a lawyer.  
20 Q In their legal department?  
21 A Yes.  
22 Q Is there a separate legal department for that, for the  
23 Department of Fisheries?  
24 A Well, no, not really. I mean, there were lawyers, but

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**DEPOSITION OF CRAIG MACDONNELL****MINI-DEP by Kenson**

1 I don't recall it being organized as a department.  
 2 Q And that's a federal department, or is that a state  
 3 department?  
 4 A State.  
 5 Q So, it's Commonwealth of Massachusetts?  
 6 A Correct.  
 7 Q And who was your supervisor at the Department of  
 8 Fisheries?  
 9 A The commissioner.  
 10 Q And who was that?  
 11 A Walter Bickford at the beginning and, later, John  
 12 Phillips.  
 13 Q Where did you go to law school?  
 14 A Cornell.  
 15 Q And undergrad?  
 16 A Nasson.  
 17 Q Could you spell that?  
 18 A N-A-S-S-O-N.  
 19 Q And where is that?  
 20 A Springvale, Maine.  
 21 Q When did you graduate from law school?  
 22 A '83.  
 23 Q In your practice as a litigator, did you practice in  
 24 state courts?

- 12 -

1 A Yes.  
 2 Q Federal courts?  
 3 A Yes.  
 4 Q And what kind of litigation did you practice?  
 5 A Mostly environmental.  
 6 Q Did you ever do corporate?  
 7 MS. FETOUH: Objection.  
 8 Q Did you ever practice corporate law?  
 9 A I worked on corporate issues. I don't know if you  
 10 could call that practicing corporate law.  
 11 Q Did you ever practice tax law?  
 12 A I worked on tax issues, but I don't know if you could  
 13 say I practiced tax law.  
 14 Q Other than your degree from Cornell, do you have any  
 15 advanced law degrees?  
 16 A No.  
 17 Q Have you taken any advanced professional education  
 18 beyond, for example, MCLE courses or that sort of  
 19 thing?  
 20 A I have.  
 21 Q And what were those in?  
 22 A I took so many that I can't remember.  
 23 Q When you left Keegan, what was the reason you left  
 24 Keegan?

- 13 -

1 A To join the Trust for Public Land.  
 2 Q Were you asked to leave, or did you leave because you  
 3 wanted --  
 4 A I chose to leave.  
 5 Q You mentioned that TPL is a -- is it a non-profit or  
 6 charitable institution, or how do you describe it?  
 7 A It's a 501c3.  
 8 Q And is that a charitable institution?  
 9 A Correct.  
 10 Q Is it also a non-profit?  
 11 A Correct.  
 12 Q Is that the same designation?  
 13 A (No response.)  
 14 Q Are you aware whether or not TPL has a designation of  
 15 being a non-profit with the Secretary of State?  
 16 A I do not know.  
 17 Q Have you ever checked to see whether TPL is listed as  
 18 a for-profit corporation?  
 19 A I have not.  
 20 Q In your role as director of the Massachusetts area,  
 21 did you in 2003 undertake any legal work for TPL?  
 22 MR. CONROY: Objection.  
 23 A I don't know how to answer that question. I mean, I  
 24 thought about legal issues. As a lawyer, I can't help

- 14 -

myself.  
 2 Q I'm going to put a document in front of you, which I  
 3 have not marked yet, and ask you if you've ever seen a  
 4 document like that.  
 5 A I have not.  
 6 Q Can I ask you to look at the second page?  
 7 A (Examining.)  
 8 Q Do you see where it appears to indicate that TPL is a  
 9 for-profit corporation? Do you see that?  
 10 A You're pointing to the X in the middle of the page?  
 11 Q Yeah.  
 12 A I see the X.  
 13 Q And that would be beside the for-profit designation,  
 14 is that correct?  
 15 A Correct.  
 16 Q And you don't have any idea why that's listed with the  
 17 Commonwealth as a for-profit corporation. Is that  
 18 correct?  
 19 A Correct.  
 20 Q Do you share in bonuses issued by TPL in connection  
 21 with monies that are derived from TPL's operation?  
 22 A There are no bonuses at TPL.  
 23 Q You're on a salary at TPL?  
 24 A Correct.

- 15 -

1 Q What is your salary?  
 2 A Somewhere in the eighty thousand to ninety thousand  
 3 dollar range, maybe between ninety and a hundred. I'm  
 4 not quite sure where it is right now.  
 5 (Plaintiff and Mr. Norris enter)  
 6 Q You're here today because you received or your  
 7 attorney received a notice of deposition, is that  
 8 correct?  
 9 A I believe that's correct.  
 10 MR. McLAUGHLIN: Can I have that marked  
 11 as Exhibit 1, please?  
 12 (WHEREUPON, Exhibit No. 1, TPL  
 13 corporate registration form, marked for  
 14 identification.)  
 15 Q Have you seen this notice of deposition before?  
 16 MR. CONROY: Can I just clarify for the  
 17 record? Exhibit 1 is the document that you've  
 18 just been asking questions about, correct?  
 19 MR. McLAUGHLIN: Yes.  
 20 MR. CONROY: Okay.  
 21 A I believe I've seen this before.  
 22 MR. McLAUGHLIN: Okay. We'll just have  
 23 that marked.  
 24 Q And that's why you're here today, correct?

- 16 -

1 A Essentially.  
 2 MR. McLAUGHLIN: We'll have that marked  
 3 as Exhibit 2.  
 4 (WHEREUPON, Exhibit No. 2, notice of  
 5 deposition, marked for identification.)  
 6 Q Do you hold any other positions with TPL--related  
 7 entities?  
 8 MS. FETOUH: Objection.  
 9 A I don't know what you mean by TPL--related entities.  
 10 Q Well, have you ever heard of TPL Land Action Fund?  
 11 A I have.  
 12 Q Well, you hesitated in answering that, and I'm  
 13 wondering. Is that because you're generally  
 14 unfamiliar with the TPL Land Action Fund?  
 15 MR. CONROY: Objection.  
 16 A The reason I hesitated is that I was trying to  
 17 remember the name.  
 18 Q What is the TPL Land Action Fund?  
 19 A I don't know.  
 20 Q I'm going to put before you a document and have you  
 21 take a look at it from the Secretary of State. Does  
 22 that refresh your memory as to what the TPL Land  
 23 Action Fund is?  
 24 A No.

- 17 -

**DEPOSITION OF CRAIG MACDONNELL****MINIDEP by Kenson**

1 Q What's the address of TPL where you work? Where do  
2 you work? What's the address?  
3 A 33 Union Street in Boston.  
4 Q And I note here that the document in front of you is  
5 also 33 Union Street. Do you see that?  
6 A Yes, it's misspelled here.  
7 Q What's misspelled, Union?  
8 A The word Union, yes.  
9 MR. McLAUGHLIN: Can we mark that as  
10 Exhibit -- whatever it is, three?  
11 (WHEREUPON, Exhibit No. 3, TPL Land  
12 Action Fund corporate registration form, marked  
13 for identification.)  
14 Q Who is Ernest Cook?  
15 A He's a gentleman who works for the Trust for Public  
16 Land.  
17 Q And does he work with you?  
18 A He works in the same building I do. He is employed by  
19 the conservation finance office of the Trust for  
20 Public Land.  
21 Q Is that a separate entity?  
22 A No.  
23 Q So, when you say conservation finance, is that the  
24 division of TPL that deals with financial matters for

- 18 -

1 the Secretary of State?  
2 A No.  
3 Q And what makes you believe that TPL is a 501c3?  
4 MR. CONROY: Objection.  
5 A That is what I had been told.  
6 Q So, you haven't specifically seen documents that would  
7 verify whether it is or is not.  
8 A I may have, but I don't currently recall.  
9 Q Can you tell me how TPL became acquainted with the  
10 Town of Stow concerning the Kunelius property?  
11 A Yes.  
12 Q Would you do that, please?  
13 A I believe the Trust for Public Land was contacted by a  
14 fellow named Peter Christianson.  
15 Q And who is Peter Christianson?  
16 A A resident of Stow.  
17 Q Did he have some official position with the Town of  
18 Stow? Was he an elected official or anything like  
19 that?  
20 A Not to my knowledge.  
21 Q And did he contact you directly?  
22 A No.  
23 Q Who did he contact?  
24 A I don't remember.

- 21 -

1 the entity?  
2 A No.  
3 Q Okay. What is conservation finance division?  
4 A I don't think it's a division. It's an office that  
5 helps communities raise money for land acquisition.  
6 Q So, he, like you, is an employee of TPL as far as you  
7 understand?  
8 A Yes.  
9 Q And is today the first time you've become aware that  
10 he is the president of the TPL Land Acquisition Fund?  
11 MS. FETOUH: Objection.  
12 A The Land Action Fund?  
13 Q The Land Action Fund, I'm sorry, Action Fund.  
14 MR. CONROY: Objection.  
15 A Yes, it is.  
16 Q I note that under Exhibit 3, on Exhibit 3, it says  
17 that the TPL Land Action Fund was organized in the  
18 year 2000, on the first page about halfway down. Are  
19 you at all surprised that this entity has existed for  
20 the last seven years or thereabouts without your  
21 knowledge?  
22 MR. CONROY: Objection.  
23 A I don't have a reaction one way or another.  
24 Q On the second page, it also indicates that it is for-

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1 Q Do you recall the circumstances as to why he called  
2 you?  
3 A Yes.  
4 Q What were those?  
5 A It was with respect to a piece of property near his  
6 house.  
7 Q And was that the Kunelius property?  
8 A The property at 142 Red Acre Road.  
9 Q And do you have reason to believe that's not the  
10 Kunelius property?  
11 A No.  
12 Q You don't recall who he contacted at TPL. Is that  
13 your testimony?  
14 A I do not.  
15 Q Do you recall the reasons that he contacted TPL?  
16 MS. FETOUH: Objection.  
17 A Yes.  
18 Q What were those?  
19 A It was with respect to a potential conservation  
20 project.  
21 Q Did Mr. Christianson tell you there was a potential  
22 project there at the Kunelius property?  
23 A I don't believe he used those words.  
24 Q Well, you didn't actually talk to him about it, so how

- 22 -

1 profit. Do you see that?  
2 A Are you looking at the X in the middle of the second  
3 page?  
4 Q Yes.  
5 A I see the X.  
6 Q And the X is to the left of the designation for-  
7 profit. Do you see that?  
8 A I do.  
9 Q Are you surprised that there is a for-profit  
10 designation for any entity related to TPL?  
11 A Yes.  
12 Q And as an attorney, were you at all involved in filing  
13 any documents with the Secretary of State for TPL  
14 during your tenure as a director of the Massachusetts  
15 section or region?  
16 MR. CONROY: Objection.  
17 MS. FETOUH: Objection.  
18 A Well, which question would you like me to answer?  
19 Q Well, let's go back. Shall we call it the  
20 Massachusetts region? Is that what you're the  
21 director of, or is it State of Massachusetts or?  
22 A You can call it the Massachusetts state office.  
23 Q Okay. So, in your role as the director, were you ever  
24 involved in filing any documents on behalf of TPL with

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1 do you know what his words were?  
2 A I don't know what his words were.  
3 Q Do you know who established that there was a potential  
4 conservation project at the Kunelius property?  
5 A I'm not sure I understand what you mean by  
6 established.  
7 Q Well, you said that he contacted you about a potential  
8 conservation project at the Kunelius property at 142  
9 Red Acre Road, and my question is --  
10 A He contacted TPL.  
11 Q And my question is: who said there was a potential  
12 project there? If you don't know what he said, how  
13 did you know there was a potential project there?  
14 A The words potential project are my words.  
15 Q Do you recall any of the circumstances surrounding the  
16 contact of TPL by Peter Christianson resulting from  
17 any discussions you had with any other people at TPL?  
18 A Yes.  
19 Q Can you tell me what you know about that?  
20 A I believe he talked to other people in my office about  
21 the potential for a conservation project on the  
22 Kunelius property.  
23 Q Now, he was not the owner at that time of the Kunelius  
24 property. Is that correct?

- 23 -

**DEPOSITION OF CRAIG MACDONNELL**

MINI DEPT by Kenson

1 A Correct.  
 2 Q Was it unusual for someone who is not an owner of a  
 3 property to contact you concerning the establishment  
 4 of a conservation project on someone else's property?  
 5 A No.  
 6 Q Does that happen regularly?  
 7 A Yes.  
 8 Q Do you recall who the people were in your office?  
 9 A I believe he contacted Valerie Talmadge.  
 10 Q And who is Valerie Talmadge?  
 11 A Valerie Talmadge is the director of projects for the  
 12 New England region.  
 13 Q Is she still an employee of TPL?  
 14 A Yes.  
 15 Q How many employees are there at TPL in Boston?  
 16 A Well, without actually taking the time to count the  
 17 offices, I'd say in the neighborhood of twenty-five or  
 18 thirty.  
 19 Q And were there 25 or 30 back in 2003?  
 20 A Maybe a few less.  
 21 Q Did you have discussions with Valerie Talmadge  
 22 concerning TPL's involvement with the property  
 23 which -- instead of calling it the Kunelius  
 24 property, I'm just going to call it the property

- 24 -

1 from now on. Did you have discussions with her  
 2 concerning the property?  
 3 A I did.  
 4 Q And what do you recall from those discussions?  
 5 A I have a general recollection of them, that Peter  
 6 Christianson proposed that TPL consider working with  
 7 the Town of Stow to conserve the Kunelius property.  
 8 Q Do you recall discussing with Valerie Talmadge what  
 9 motivated Mr. Christianson to come to TPL?  
 10 A No.  
 11 Q Do you recall that there was a 40B development on the  
 12 Kunelius property approximately at the time that TPL  
 13 was contacted?  
 14 A Yes.  
 15 Q Does that refresh your memory at all as to why  
 16 Mr. Christianson had contacted TPL, i.e., that  
 17 they wanted a conservation development rather  
 18 than a 40B development?  
 19 A Does that itself refresh my recollection?  
 20 Q Yes.  
 21 A No.  
 22 Q Do you have any knowledge concerning  
 23 Mr. Christianson's wish that a 40B not be built  
 24 on property adjacent to his property?

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1 A Yes.  
 2 Q And is it fair to say that Mr. Christianson made that  
 3 known to TPL fairly early on in his discussions with  
 4 TPL involving the possibility of TPL getting a  
 5 conservation restriction on the property?  
 6 A I don't recall.  
 7 Q Do you recall ever meeting Mr. Christianson yourself?  
 8 A Yes.  
 9 Q And how long after his initial contact with TPL did  
 10 you meet him, approximately?  
 11 A I'm not sure.  
 12 Q Do you recall approximately when the initial contact  
 13 was made from Mr. Christianson to TPL?  
 14 A I believe it was in the winter.  
 15 Q The winter of 2002?  
 16 A I'm not sure.  
 17 Q Did Mr. Christianson come to your office at some point  
 18 prior to you contacting the Town of Stow officials  
 19 concerning the possibility of TPL's involvement?  
 20 A I don't know when, in the sequence of things, he came  
 21 to TPL's office.  
 22 Q Do you recall meeting with him in your office?  
 23 A I do.  
 24 Q And when was that?

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1 A That's what I don't remember.  
 2 Q Was it prior to your involvement in attending any  
 3 public hearings in the Town of Stow concerning Mosaic  
 4 Commons?  
 5 MS. FETOUH: Objection.  
 6 A That's what I don't remember, is when.  
 7 Q You're familiar with the term Mosaic Commons?  
 8 A I'm familiar with the entity known as Mosaic Commons.  
 9 Q And what is it?  
 10 A I understand it's a development company.  
 11 Q And did you have an understanding at some point that  
 12 Mosaic Commons had intended to purchase the Kunelius  
 13 property?  
 14 A Yes.  
 15 Q And is it fair to say that the intended purchase of  
 16 the Kunelius property by Mosaic Commons was one of the  
 17 reasons that you were contacted concerning TPL's  
 18 involvement?  
 19 A The proposed land use change, it's my understanding,  
 20 was the reason that we were contacted.  
 21 Q And the proposed land use change, by that you mean  
 22 that the Kunelius property was under either a farm  
 23 designation or forestry designation under Chapter 61  
 24 and, if it were sold to Mosaic Commons, it would be

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1 changed to some other designation. Is that right?  
 2 A By that I mean that there was development planned.  
 3 That's all I mean.  
 4 Q Let me go back. Do you recall attending meetings in  
 5 December of 2002 where Mosaic Commons made  
 6 presentations to the Town of Stow, the Board of  
 7 Selectmen?  
 8 A I don't remember seeing presentations.  
 9 Q Do you recall whether anyone at TPL attended meetings  
 10 where Mosaic Commons made a presentation to the Board  
 11 of Selectmen or any other board of the Town of Stow?  
 12 A The introduction to your question, do I remember if  
 13 anybody from TPL?  
 14 Q Yes.  
 15 A No.  
 16 Q Would you have been the point person, in other words,  
 17 the person with the general authority, to go to such  
 18 meetings and make comments at such meetings on behalf  
 19 of TPL?  
 20 MS. FETOUH: Objection.  
 21 A I don't know about the authority question. So, I'm  
 22 not sure how to answer that.  
 23 Q Well, would TPL send an intern to have discussions  
 24 with the town's Board of Selectmen concerning the

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1 possibility of having TPL assist the town in some way?  
 2 MR. CONROY: Objection.  
 3 MS. FETOUH: Objection.  
 4 A Well, TPL scopes projects in a lot of different ways  
 5 and gathers lots of information about projects ahead  
 6 of time. Sometimes that involves project managers.  
 7 Sometimes that involves interns.  
 8 Q Tell me about the scoping of a project. Does that  
 9 mean that, prior to a potential sale of property that  
 10 might change a land use designation, you might know  
 11 about that even before the sale occurs?  
 12 MR. CONROY: Objection.  
 13 MS. FETOUH: Objection.  
 14 A I don't understand your question.  
 15 Q Well, tell me what you mean when you say scopes a  
 16 project.  
 17 A Analyzes a potential project. That's what scope  
 18 means.  
 19 Q And what do you do to analyze a project?  
 20 A You have discussions with local representatives. You  
 21 take a look at sort of the whole constellation of  
 22 factors that enable conservation projects to occur,  
 23 including the availability of conservation financing,  
 24 various transactional pieces, and you make an

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**DEPOSITION OF CRAIG MACDONNELL****MINIDEP by Kenson**

1 assessment about the political interest of, in this  
 2 case, a town to undertake a conservation project.  
 3 Q And did such a scoping occur with regard to the  
 4 Kunelius property?  
 5 A Yes.  
 6 Q And do you recall when that scoping began?  
 7 A No.  
 8 Q Is it likely that it began when you were first  
 9 contacted by Mr. Christianson?  
 10 A Yes.  
 11 Q Other than Mr. Christianson, who else attended the  
 12 meeting with you at your office that you mentioned  
 13 earlier?  
 14 A The meeting that I mentioned, if you recall, I  
 15 couldn't put a date on it, and, actually, as I think  
 16 about it now, I can't remember who else was there. I  
 17 do remember meeting Mr. Christianson in my office.  
 18 Q Do you recall whether other people were there?  
 19 A I don't recall.  
 20 Q Do you recall whether other TPL personnel were there?  
 21 A I don't recall.  
 22 Q Is it likely that Valerie Talmadge would have been  
 23 there?  
 24 MS. FETOUH: Objection.

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1 A No.  
 2 Q Have you testified in any litigation?  
 3 A No.  
 4 Q Are you still a member of the bar?  
 5 A Yes.  
 6 Q At some point, did you contact the Town of Stow  
 7 concerning the possibility of TPL acquiring the  
 8 property, the Kunelius property?  
 9 A Yes.  
 10 Q And do you recall when that was?  
 11 A No.  
 12 Q You have no idea at all as to when you may have  
 13 initiated a discussion with them concerning TPL  
 14 acquiring the property. Is that your testimony?  
 15 MR. CONROY: Objection.  
 16 MS. FETOUH: Objection.  
 17 A My testimony is, for the third time, I don't remember  
 18 when it happened.  
 19 Q Do you remember, generally, when it happened?  
 20 A After talking with Peter.  
 21 Q But I'm talking about something different. So, maybe  
 22 I'm being unclear. I didn't ask you when you  
 23 initiated discussions concerning a conservation  
 24 commission, I mean, a conservation restriction. I'm

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1 A I don't know how to answer it. I mean, I can tell you  
 2 what I remember. What I remember is that I did meet  
 3 with Mr. Christianson, but I don't remember who else  
 4 was there.  
 5 Q And if I've asked this question, I apologize. Do you  
 6 recall, in that meeting, Mr. Christianson looking for  
 7 ways to prevent a 40B development occurring on the  
 8 Kunelius property?  
 9 A The focus of the conversation, if I remember it in  
 10 that first meeting, was the creation of a conservation  
 11 project, and how one would do that, more than the  
 12 prevention of an alternative.  
 13 Q Do you recall that Mr. Christianson was concerned  
 14 about low-income housing being adjacent to his  
 15 property?  
 16 A No.  
 17 Q At some point, after meeting with Mr. Christianson,  
 18 did you initiate any contact with the Town of Stow on  
 19 behalf of TPL?  
 20 A I don't recall whether I initiated any contact.  
 21 Q Who would have initiated contact with the Town of  
 22 Stow, if you did not, from TPL?  
 23 MR. CONROY: Objection.  
 24 MS. FETOUH: Objection.

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1 asking you: when did you initiate discussions with  
 2 the Town of Stow concerning TPL acquiring the Kunelius  
 3 property?  
 4 MR. CONROY: Objection.  
 5 MS. FETOUH: Objection.  
 6 MS. ECKER: Objection.  
 7 A I'm not sure what you mean by acquiring the property.  
 8 I mean, I don't distinguish -- I mean, my memory is  
 9 that I had discussions with the town in the period of  
 10 time after Peter Christianson brought this potential  
 11 project to our attention. That's my memory.  
 12 Q But you don't understand the term acquiring the  
 13 property as I'm using it?  
 14 A Well, the discussions weren't so much about acquiring  
 15 as they were about how to do a potential conservation  
 16 project out there.  
 17 Q Did, using your term, doing a potential conservation  
 18 project out there, involve acquiring some or all of  
 19 the Kunelius property by TPL?  
 20 A It may have or it may not have. At the beginning of a  
 21 project, you don't pre-ordain what the outcome of the  
 22 project is.  
 23 Q But my question to you, sir, is: when did you discuss  
 24 it where it did involve the acquiring of the property

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1 A Normally, the person who would be handling the  
 2 potential scoping would make that contact.  
 3 Q And who was that in this case?  
 4 A That would be me.  
 5 Q So, is it likely that you were the person that  
 6 contacted the Town of Stow?  
 7 A Well, I'd like to tell you that I remember contacting  
 8 the Town of Stow, but at this point in time, I just  
 9 don't remember that. I've had conversations with  
 10 Stow, subsequently, but whether or not I was the one  
 11 who initiated that contact, I just don't recall.  
 12 Q But since you were the person running the scoping of  
 13 the project, it is likely that you were the person  
 14 that would contact the town? Is that correct?  
 15 MR. CONROY: Objection.  
 16 MS. FETOUH: Objection.  
 17 MR. CONROY: I think it's been asked  
 18 and answered.  
 19 A I've tried to tell you what I remember about it. I  
 20 don't recall whether, in this situation, it was me or  
 21 not.  
 22 Q How old are you?  
 23 A Fifty.  
 24 Q Have you testified before in a deposition?

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1 by TPL?  
 2 A Sometime after meeting with Peter.  
 3 Q And would that be in 1999?  
 4 A No. I don't recall.  
 5 Q So, you do have some sense of, generally, when it was.  
 6 Can you give me, plus or minus, a year? When did you  
 7 do this?  
 8 A Well, my memory is that this project occurred during  
 9 the 2003 and 2004 period, generally. So, that  
 10 suggests that these conversations took place during  
 11 that time.  
 12 (WHEREUPON, Exhibit No. 4, Stow annual  
 13 report, 2003, marked for identification.)  
 14 Q I've put before you a document which has been marked  
 15 as Exhibit 4 and ask you if you've seen this before.  
 16 A I believe I have.  
 17 Q And on the first page -- by the way, this has a Bate  
 18 stamp on it of KUN205 through 216. These are  
 19 documents that were provided by the Town of Stow.  
 20 That is their designation on the Bate stamp number.  
 21 The first page of this document, which is  
 22 Exhibit 4, has a picture of a horse on it and it  
 23 says Town of Stow Annual Report, 2003, Red Acre  
 24 Farm. Do you see that?

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**DEPOSITION OF CRAIG MACDONNELL**

MINI-DEP by Kenson

1 A I do.  
 2 Q The second page indicates that this is a special town  
 3 meeting. It has a heading: Special Town Meeting,  
 4 2003, January 13, 2003. Do you see that?  
 5 A Yes.  
 6 Q Now, just looking at that, does that in any way assist  
 7 you as to whether or not you may have contacted the  
 8 Town of Stow in 2002 concerning the possibility of  
 9 acquiring the Kunelius property?  
 10 A Looking at Page 2?  
 11 Q Yes.  
 12 A Page 2 does not remind me.  
 13 Q Well, you see where it says there's a special town  
 14 meeting of January 13th?  
 15 A Yes.  
 16 Q Is it likely that a special town meeting dealing with  
 17 the Kunelius property, that you would have attended  
 18 such a meeting, if in fact you did, without first  
 19 making contact with the town prior to January 13,  
 20 2003?  
 21 MR. CONROY: Objection.  
 22 MS. FETOUH: Objection.  
 23 A Could I take a minute and just read this?  
 24 Q Well, actually, let me just direct you to a couple of

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1 A The assignee.  
 2 Q And do you have an understanding of what this  
 3 paragraph is referring to or who the assignee would be  
 4 under this paragraph?  
 5 A TPL.  
 6 Q So, when TPL then becomes the assignee, sir, was it  
 7 your expectation that TPL would then purchase the  
 8 land?  
 9 MS. FETOUH: Objection.  
 10 A It was my expectation that we would live by the terms  
 11 of the contract.  
 12 Q No, was it your expectation that under the terms of  
 13 the assignment the only entity that could purchase the  
 14 land would be TPL?  
 15 A Correct.  
 16 Q Now, do you recall, having read this, when you would  
 17 have first discussed the possibility of TPL acquiring  
 18 the land by assignment? Strike that.  
 19 Do you recall when you discussed this with  
 20 the town officials, concerning TPL acquiring the  
 21 land by assignment, given the fact that this  
 22 representation appears to be sometime on January  
 23 13th of 2003?  
 24 MR. CONROY: Objection.

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1 sections which may be helpful to you.  
 2 A Okay.  
 3 Q I'd like you to take a look on Page 95, also, marked  
 4 as KUN211. In the third full paragraph down, it says:  
 5 Craig MacDonald of the Trust for Public Land would  
 6 work with the Stow Conservation Trust and Friends of  
 7 Red Acre together with the selectmen with regard to  
 8 the Chapter 61A assignment. TPL would be the project  
 9 manager. Do you see that?  
 10 MR. CONROY: It's MacDonnell, by the  
 11 way.  
 12 MR. McLAUGHLIN: What did I say?  
 13 MR. CONROY: MacDonald.  
 14 MR. McLAUGHLIN: I'm sorry. I  
 15 apologize.  
 16 A I see that.  
 17 Q Does this suggest to you that you had contacted the  
 18 Town of Stow prior to January 13, 2003, in order to at  
 19 least discuss a Chapter 61 matter, 61A assignment?  
 20 A Yes.  
 21 Q And can you tell me what a 61A assignment would be?  
 22 A My understanding is that, under Mass. General Law,  
 23 Chapter 61A, there's a provision that authorizes  
 24 municipalities to assign rights of first refusal to

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1 A Well, this paragraph would suggest to me that  
 2 conversations occurred prior to the town meeting.  
 3 Q Is it likely that TPL met with the town in December of  
 4 2002 concerning this issue of a possible of assignment  
 5 of the right of first refusal?  
 6 MR. CONROY: Objection.  
 7 MS. FETOUH: Objection.  
 8 A Well, what I can say is that TPL did meet with town  
 9 officials prior to January 13th.  
 10 Q Was it you that met with the town officials prior to  
 11 January 13th?  
 12 A I believe so.  
 13 Q And who did you meet with?  
 14 A There were many meetings between myself and municipal  
 15 officials regarding this project over many months, and  
 16 so I guess there were maybe seventy-five or a hundred  
 17 meetings over the period of this project. So, for me  
 18 to remember how who was at any one meeting is  
 19 difficult, but I do remember there were a series of  
 20 meetings.  
 21 Q You don't remember who was at the first meeting, the  
 22 introductory meeting. Is that your testimony?  
 23 A Correct.  
 24 Q You don't remember where the introductory meeting was.

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1 conservation organizations.  
 2 Q And do I understand it correctly that this reference  
 3 is referring to the possible assignment of the right  
 4 of first refusal to TPL?  
 5 A This paragraph?  
 6 Q Uh-huh.  
 7 A Yes, I believe that would be the case.  
 8 Q So, this is referring to -- it's also referring to TPL  
 9 would be the project manager. What does that mean?  
 10 MR. CONROY: To whom?  
 11 MR. McLAUGHLIN: I don't know. That's  
 12 what it says. What does it mean to him?  
 13 A What does that mean to me?  
 14 Q Yeah.  
 15 A It means that we would manage the conservation  
 16 project.  
 17 Q And would you manage the assignment?  
 18 MS. FETOUH: Objection.  
 19 A We would help the town accomplish the assignment.  
 20 Q And when the assignment occurs, who has the right to  
 21 purchase the property under the terms of an  
 22 assignment?  
 23 MR. CONROY: Objection.  
 24 MS. FETOUH: Objection.

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1 Is that right?  
 2 A I don't.  
 3 Q You don't recall whether it was the Board of  
 4 Selectmen. Is that correct?  
 5 A I do not.  
 6 Q You don't remember whether the meeting was in your  
 7 office or in the Town of Stow.  
 8 A I don't remember the first meeting.  
 9 Q Do you remember the second meeting?  
 10 A No.  
 11 Q In your role as director, who would you normally  
 12 contact from a town when initiating discussions  
 13 concerning a Chapter 61A assignment?  
 14 MS. FETOUH: Objection.  
 15 A I would be interested in talking to the Board of  
 16 Selectmen.  
 17 Q But you don't know in this case whether you contacted  
 18 the Board of Selectmen?  
 19 A I do not recall.  
 20 Q Who else in the Town of Stow would you have contacted  
 21 in order to initiate discussions on a Chapter 61A  
 22 assignment?  
 23 MS. FETOUH: Objection.  
 24 MR. CONROY: Might he have contacted?

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## DEPOSITION OF CRAIG MACDONNELL

MINIDEP by Kenson

1 MR. McLAUGHLIN: Yeah.  
 2 A Well, what I can say is, normally, in a 61A project, I  
 3 like to talk to people on the Conservation Commission.  
 4 I like to talk to people on the CPC and on the  
 5 Planning Board and other municipal committees. The  
 6 objective is to get a feel for the possibility of the  
 7 project by talking to as many people as possible, and  
 8 because TPL has many projects going in every year,  
 9 there are hundreds of these meetings that occur, have  
 10 occurred, since 2002.  
 11 Q You described having seventy-five or a hundred  
 12 meetings with the town officials from the initiation  
 13 of the possibility of an assignment of the Chapter 61A  
 14 exercise of right of first refusal to --  
 15 A I'd like to clarify that. I'd say discussions,  
 16 probably not meetings but discussions.  
 17 Q Okay. The span of time from the initiation, perhaps  
 18 sometime before January 13, 2003, to the end of the  
 19 hundredth meeting was approximately what date?  
 20 MS. FETOUH: Objection.  
 21 A Well, I'm not saying there were a hundred meetings. I  
 22 said I've had between seventy-five and a hundred  
 23 discussions.  
 24 Q Okay.

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1 A And that's a ball-park. So, your question is?  
 2 Q Well, over what span of time did you have these  
 3 discussions and/or meetings, beginning with --  
 4 A The course of the whole project.  
 5 Q At some point, is it fair to say you actively began  
 6 lobbying for the possibility of accepting an  
 7 assignment of the 61A right of first refusal?  
 8 MR. CONROY: Objection.  
 9 MS. FETOUH: Objection.  
 10 A Lobbying to whom?  
 11 Q To the town.  
 12 A It is fair that at some point it made sense to TPL  
 13 that, for the project to go forward, the way that  
 14 would occur is via an assignment of the right of first  
 15 refusal.  
 16 Q And at some point did you begin any process of  
 17 convincing the town that that was the way the project  
 18 should go?  
 19 A Well, I had a number of discussions, the place and  
 20 time of which I can't recall right now, with various  
 21 town officials about how to go forward, how to do  
 22 this, and we certainly talked about Chapter 61A among,  
 23 you know, a whole host of other issues.  
 24 Q And when you would have these discussions, do you ever

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1 recall discussions with a political body, such as the  
 2 entire Board of Selectmen?  
 3 A Yes.  
 4 Q And how often did you meet with the entire Board of  
 5 Selectmen?  
 6 A I don't recall the frequency. I think it was a number  
 7 of times that I met with the whole board.  
 8 Q Did you meet with them during official Board of  
 9 Selectmen hearings or privately?  
 10 A I met with them during regularly scheduled meetings,  
 11 and I believe I had conversations with individual  
 12 members outside of those meetings.  
 13 Q Do you know approximately when you met with the Board  
 14 of Selectmen in official meetings?  
 15 A No.  
 16 Q Can you tell me approximately when you did that?  
 17 A Not with reference to a date. I mean, I believe that,  
 18 in order to accomplish the assignment, there were  
 19 meetings with the Board of Selectmen in advance of the  
 20 actual assignment. So, you know, in relation to other  
 21 events, I can remember it, but I don't have dates in  
 22 mind.  
 23 Q Do you recall when the assignment took place?  
 24 A I believe it was in 2003.

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1 (WHEREUPON, Exhibit No. 5, Stow letter  
 2 with attachments to Kunelius, dated February 12,  
 3 2003, marked for identification.)  
 4 Q I've put before you what has been marked as Exhibit 5  
 5 and ask you if you've seen that before.  
 6 A Yes, I believe I have.  
 7 Q Now, for the record, this is a compilation of  
 8 documents as received from the Town of Stow. So, they  
 9 were stapled together in this matter when we received  
 10 them and I've left them that way. The first page is  
 11 KUN474. It is a February 12th letter to Marilyn  
 12 Kunelius from the Board of Selectmen. The second one  
 13 is an assignment and acceptance, and that's 476,  
 14 signed by three members of the Board of Selectmen.  
 15 And the third page is an acceptance of assignment,  
 16 which is 478, and that is signed by Dorothy Nelson  
 17 Stuckey, regional counsel, Trust for Public Land.  
 18 Now, does this exhibit, number five, assist  
 19 you in getting a sense of when the assignment  
 20 took place?  
 21 A It does.  
 22 Q And the first page of Exhibit 5 is a notice from the  
 23 Town of Stow to Marilyn Kunelius that they are  
 24 assigning the right of first refusal to the Trust for

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1 Public Land. Do you see that?  
 2 A I do.  
 3 Q And you've seen this before. Is that correct?  
 4 A Yes.  
 5 Q And this is copied to Dorothy Nelson Stuckey, Trust  
 6 for Public Land, on the cc: line. Is that correct?  
 7 A Yes.  
 8 Q And does she remain counsel for the Trust for Public  
 9 Land?  
 10 A Yes.  
 11 Q And that was on February 12th of 2003. Is that  
 12 correct?  
 13 A Exhibit 5 is dated February 12th.  
 14 Q And the last page of Exhibit 5 is an acceptance of the  
 15 assignment signed on February 12, 2003. Do you recall  
 16 that?  
 17 A Do I recall the acceptance?  
 18 Q I'm sorry. Am I correct there?  
 19 A Well, I see the last page of Exhibit 5.  
 20 Q Okay. Now, were you at any meeting of the Board of  
 21 Selectmen when they voted to assign the rights to TPL?  
 22 A I believe I was.  
 23 Q And do you recall when that meeting was?  
 24 A No.

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1 Q Was Dorothy Stuckey with you at that meeting with the  
 2 Board of Selectmen when they voted to assign the right  
 3 of first refusal to you, to TPL?  
 4 A Don't believe so.  
 5 Q Well, I note that both are dated the same date,  
 6 February 12th. Do you see that?  
 7 A Page 3 being -- or --  
 8 Q Well, if we look at the date of the letter, first page  
 9 of Exhibit 5, February 12, 2003, and if you look at  
 10 the acceptance, it's dated the same day. Would that  
 11 suggest that she was with you at a meeting concerning  
 12 the acceptance?  
 13 A Not necessarily.  
 14 Q So, you don't remember whether she was even with you  
 15 at the meeting of the Board of Selectmen when the  
 16 assignment was made?  
 17 MS. FETOUH: Objection, asked and  
 18 answered.  
 19 A My recollection is that she was not.  
 20 Q And did you have the authority, at the time of the  
 21 vote to assign it to TPL, to accept on behalf of TPL  
 22 that assignment?  
 23 A Are you asking whether, as Massachusetts state  
 24 director, I had the authority to do that?

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**DEPOSITION OF CRAIG MACDONNELL****MINIDEP by Kenson**

1 Q Yeah.  
 2 A I don't know whether I had the authority to do it.  
 3 Let me clarify that. I believe the Trust for Public  
 4 Land had considered this and had voted to accept the  
 5 assignment and, by that vote, essentially authorize  
 6 Dorothy Stuckey to sign that acceptance.  
 7 Q And was that a vote of the Board of Directors of TPL?  
 8 A It was a vote of the Project Review Committee of the  
 9 Board of Directors.  
 10 Q And is that of the national Board of Directors or is  
 11 there --  
 12 A There is only one Board of Directors.  
 13 Q So, the Project Review Committee voted to accept the  
 14 assignment?  
 15 A Correct.  
 16 Q And it's that vote that authorized Dorothy Stuckey to  
 17 accept on behalf of TPL?  
 18 A Correct.  
 19 Q And it is likely, therefore, that the vote occurred  
 20 prior to her accepting the assignment? Is that  
 21 correct?  
 22 A It is likely.  
 23 Q I'm going to put before you another document. Do you  
 24 have a sense, prior to doing that, when they voted?

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1 Would they have voted a week before, a day before?  
 2 A I do not know.  
 3 (WHEREUPON, Exhibit No. 6, MacDonnell  
 4 letter to Perry, dated February 11, 2003, marked  
 5 for identification.)  
 6 Q I've put before you a document that we received from  
 7 the Town of Stow. This has been marked as Exhibit 6.  
 8 It's a February 11, 2003, letter to Ross Perry from  
 9 Craig MacDonnell, Massachusetts state director. Do  
 10 you recognize this?  
 11 A I do.  
 12 Q Is that your signature?  
 13 A Yes.  
 14 Q Now, this is dated the day before the vote to assign  
 15 to TPL, is that correct?  
 16 MS. FETOUH: Objection.  
 17 A It's dated February 11th.  
 18 Q And this is the day before Dorothy Stuckey accepted  
 19 the assignment, correct?  
 20 MR. CONROY: Objection.  
 21 A The day before the 12th, which is the date next to  
 22 Dorothy's signature on Exhibit 5.  
 23 Q So, it's the day before she accepted the assignment.  
 24 Is that fair to say?

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1 MR. CONROY: Objection.  
 2 MS. FETOUH: Objection.  
 3 A Well, since I don't have a recollection independent of  
 4 these documents, what happened in what sequence, all I  
 5 can do is sort of agree with you that those two dates  
 6 are one after another.  
 7 Q Looking at the first paragraph of Exhibit 6, well,  
 8 strike that.  
 9 Do you have a recollection of why you sent  
 10 this letter to Ross Perry?  
 11 A I need to take a minute and read this. Okay. Your  
 12 question?  
 13 Q Is it fair to say this was a letter from you  
 14 establishing what the terms were that would have to be  
 15 met by the town in order for TPL to accept the  
 16 assignment of the right of first refusal?  
 17 A It was a proposal to that effect, yes.  
 18 Q And did the town meet your proposal?  
 19 A I believe they did.  
 20 Q And that resulted in the assignment the next day. Is  
 21 that correct?  
 22 MS. FETOUH: Objection.  
 23 A I believe it resulted in the assignment. I don't have  
 24 independent recollection of the date that it actually

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1 occurred.  
 2 (WHEREUPON, Exhibit No. 7, Conditions  
 3 for right of first refusal, marked for  
 4 identification.)  
 5 Q I am going to put before you the next document,  
 6 Exhibit 7. Do you recognize this document?  
 7 A I don't.  
 8 Q Do you recall this document -- well, let me suggest to  
 9 you that there are numerous copies of this document in  
 10 the Town's production which indicate that this is  
 11 something that was sent to you seeking answers to the  
 12 questions outlined, or the statements outlined, in two  
 13 pages.  
 14 MS. FETOUH: Objection.  
 15 Q Does that in any way refresh your memory?  
 16 A That by itself doesn't, no.  
 17 Q This document appears -- it's an unsigned document  
 18 that has a signature line for Ross Perry. Do you see  
 19 that on the second page?  
 20 A Yes.  
 21 Q Do you recall Ross Perry discussing with you topic  
 22 number two on the front page of Exhibit 7? And for  
 23 the record, the second item on the first page is:  
 24 Town is held harmless if TPL backs out of deal before

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1 closing. In other words, TPL will defend the town  
 2 against any suit resulting from the failure of the  
 3 property purchase to be completed. Alternatively, TPL  
 4 posts a bond that guarantees their performance.  
 5 A I remember discussing this issue with the board as a  
 6 whole. I don't remember having an individual  
 7 discussion with Ross Perry about it.  
 8 Q What do you remember about that discussion?  
 9 A I remember the issue of indemnification coming up in  
 10 the Board of Selectmen's meeting.  
 11 Q And what do you recall about the indemnification issue  
 12 at the Board of Selectmen meeting?  
 13 MR. CONROY: Hold on one minute. Go  
 14 ahead.  
 15 A I remember it was discussed in the open meeting.  
 16 MR. CONROY: That having been asked and  
 17 answered, can I just have a minute with counsel?  
 18 MR. McLAUGHLIN: Sure.  
 19 (Brief recess held)  
 20 MR. McLAUGHLIN: Can you repeat the  
 21 question? I don't even remember what it was.  
 22 (Question and answer read back)  
 23 Q Can you tell me what you remember about the  
 24 indemnification issue during the meeting at the Board

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1 of Selectmen?  
 2 A Yes.  
 3 Q Go ahead.  
 4 A I remember the issue was discussed. William Wrigley  
 5 raised the issue, asked if TPL would indemnify. I  
 6 told the board we would not.  
 7 Q Is that your recollection?  
 8 A Yes.  
 9 Q Do you recall why they were asking for  
 10 indemnification?  
 11 MR. CONROY: Objection.  
 12 MS. FETOUH: Objection.  
 13 MR. McLAUGHLIN: Strike that.  
 14 Q Do you recall whether they told you why they were  
 15 asking for the indemnification?  
 16 A I don't.  
 17 Q Do you recall whether they asked you whether TPL had  
 18 the money to make the purchase under the terms of the  
 19 right of first refusal?  
 20 A I don't.  
 21 Q Do you recall telling TPL, I'm sorry, do you recall  
 22 telling the Board of Selectmen that TPL did have the  
 23 money necessary to make the purchase?  
 24 A No.

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**DEPOSITION OF CRAIG MACDONNELL**

MINI DEP by Kenson

1 Q You do not recall telling them that. Do you know  
2 whether TPL did have the money to make the purchase at  
3 the time that you met with the Board of Selectmen on,  
4 I presume, February 11th or 12th?  
5 A I'm not sure I know what you mean by have the money.  
6 Q Did you have the funds necessary to complete the  
7 purchase?  
8 A No, not in hand.  
9 Q What was the source of the money that would allow TPL  
10 to make the purchase under the terms of the right of  
11 first refusal?  
12 A I believe it was a combination of sources, including  
13 the Town of Stow, a hoped for private sale of a part  
14 of Mrs. Kunelius' property and private fund-raising.  
15 Q Any state money?  
16 A There was the hope for a grant.  
17 Q Okay. Let's go back to Exhibit No. 6 for a moment.  
18 On the first page of No. 6, there's a reference to  
19 \$100,000 for affordable housing and 300,000 for open  
20 space. Is that correct?  
21 A I see that.  
22 Q And is that the amount that you were looking for when  
23 you referred to the source of money from the Town of  
24 Stow?

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1 A Yes.  
2 Q So, there's \$400,000 there.  
3 A Correct.  
4 Q Did TPL ever receive any of that money?  
5 A No.  
6 Q The second reference you made was the hoped for  
7 private sale. And I would ask you to look at the same  
8 Exhibit 6, and it refers to deeds from private  
9 parcels. Is that correct?  
10 A I see those words.  
11 Q And is that what you were referring to when you said  
12 that a source of the money would be hoped for private  
13 sales?  
14 A Well, the intention was to subdivide Mrs. Kunelius'  
15 land into three portions, one for the town and two  
16 lots that would be sold privately, the two lots we  
17 referred to as 142 and 144. So, the hope was to sell  
18 those two lots, 142 and 144, on the private market and  
19 raise funds for Mrs. Kunelius.  
20 Q And raise funds. Where on Exhibit 6 does it discuss,  
21 as a requirement of accepting the assignment, that  
22 funds would have to be raised?  
23 MS. FETOUH: Objection.  
24 MR. CONROY: Objection.

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1 A Well, the four hundred thousand are funds that would  
2 need to be raised.  
3 Q So, the \$400,000 of funds we've already discussed in  
4 the funds to be raised by the Town of Stow, I thought.  
5 Am I incorrect there?  
6 A No. No, you're correct.  
7 Q And so then there's \$400,000. And then you hoped for  
8 funds from the private sale of one or two of the lots.  
9 Am I correct there?  
10 A Both lots, sale of both lots.  
11 Q And does it say anywhere in Exhibit 6 how much money  
12 that would be, would be derived from the sale of the  
13 two lots?  
14 A I don't believe so.  
15 Q So, you didn't make, as a requirement of the  
16 acceptance of the right of first refusal, a specific  
17 dollar amount that would have to be derived from the  
18 hoped for private sale, is that correct?  
19 A In this letter, no.  
20 Q And between the date of this letter, January 11th, and  
21 the acceptance --  
22 MS. FETOUH: February 11th?  
23 Q I'm sorry, February 11, 2003, and the acceptance on  
24 February 12, 2003, in which Dorothy Stuckey on behalf

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1 of TPL accepted the assignment, are you aware of any  
2 other document that would have outlined additional  
3 requirements of TPL necessary for TPL to accept the  
4 assignment?  
5 A As I sit here this morning, no.  
6 Q Now, the private funding, let's get back to the  
7 private funding that you referred to, private funding,  
8 private fund-raising. Where does your letter of  
9 February 11th, Exhibit 6, refer to that private fund-  
10 raising?  
11 MR. CONROY: Objection.  
12 MS. FETOUH: Objection.  
13 A I don't believe it does.  
14 Q And are you aware of any other document between  
15 February 11th and February 12th of 2003 that  
16 established, as a condition for the acceptance of the  
17 assignment, that private fund-raising would be a  
18 necessary component of the acceptance?  
19 A As I sit here this morning, no.  
20 Q Looking at the last page of Exhibit 6, there's a  
21 paragraph that states: Under these circumstances, TPL  
22 will entertain acceptance of the ROFR. All in  
23 caps. Right of first refusal is what that means.  
24 Is that correct?

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1 A Yes.  
2 Q Upon acceptance, TPL, quote, steps into the shoes,  
3 unquote, of the buyer and is bound by the applicable  
4 terms of the contract. Have I read that correctly?  
5 A You have.  
6 Q What did you mean by applicable terms?  
7 A I meant the terms that the common law would require  
8 TPL to meet.  
9 Q And what do you mean by common law? What terms would  
10 the common law require?  
11 MR. CONROY: Objection.  
12 A I mean decisions of the Massachusetts courts under  
13 Chapter 61A.  
14 Q And in fact, at that point, did you not have an  
15 understanding that there were no decisions concerning  
16 what terms would necessarily be applicable and what  
17 terms would not?  
18 MS. FETOUH: Objection.  
19 MR. CONROY: Objection.  
20 A My understanding was that courts would apply some  
21 terms and not other terms.  
22 Q And did you have an understanding of what those terms  
23 were that would be applicable and what terms would not  
24 be applicable?

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1 A My understanding was that the terms that would  
2 naturally make sense for an assignee to abide by would  
3 apply.  
4 Q So, in your mind, when you wrote Exhibit 6, you had an  
5 understanding that some of the terms of the contract  
6 were applicable to the assignment and some were not.  
7 Is that correct?  
8 A Basically.  
9 Q Do you recall being asked by the Town of Stow to  
10 identify what terms you thought were applicable and  
11 what terms you did not think were applicable?  
12 A No.  
13 MR. CONROY: Somewhere in here, Mike,  
14 I'd like to take a five-minute break if we could.  
15 MR. McLAUGHLIN: Sure. That would be  
16 good. It's now 11:30. We'll take a break; 531  
17 for the ladies room, is the code, and then why  
18 don't we go, say, to 12:30. There's a cafeteria  
19 downstairs that's not bad. Oh, you know that.  
20 MR. CONROY: So I hear.  
21 MR. McLAUGHLIN: Cafeteria downstairs  
22 is not bad, and we can take like a half hour if  
23 that's all right.  
24

(Recess, 11:30 A.M.)

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## DEPOSITION OF CRAIG MACDONNELL

MINIDEP by Kenson

1 (After recess, 11:44 A.M.)  
 2 THE WITNESS: Are we still on Exhibit 6  
 3 here?  
 4 MR. McLAUGHLIN: We're still on  
 5 Exhibit 6, yeah.  
 6 THE WITNESS: All right.  
 7 Q Just so I understand, when you refer to the language  
 8 on Exhibit 6, on the last page, where it says, "Upon  
 9 acceptance, TPL steps into the shoes of the buyer and  
 10 is bound by the applicable terms of the contract,"  
 11 have I understood you correctly that you believed that  
 12 there were terms that you did not have to abide with  
 13 in the contract, or comply with in the contract, when  
 14 you wrote this letter?  
 15 A By that sentence, I meant to convey my general  
 16 understanding about an assignee's obligation under  
 17 Chapter 61. As a general matter, I did not have in my  
 18 mind at that time a particular term, if that's what  
 19 you're asking, that would not apply.  
 20 Q Okay.  
 21 A But while we're on that sentence, I'd like to clarify  
 22 something I said earlier about this letter not  
 23 referencing any other financing that was required.  
 24 The next sentence in that paragraph, where I

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1 wrote, "TPL is ready to work hard to assemble the  
 2 finances required to make the seller whole," by  
 3 that sentence, I meant that there was a lot of  
 4 work to do to bring the finances to the table,  
 5 including town money, private sale money and  
 6 private fund-raising.  
 7 Q So, the reader of the sentence that you just read, TPL  
 8 is ready to work hard to assemble the finances  
 9 required to make the seller whole, the reader of that  
 10 would have to know that it involved some private fund-  
 11 raising as well. Is that your testimony?  
 12 MS. FETOUH: Objection.  
 13 MR. CONROY: Objection.  
 14 A Not really. I'm just trying to tell you what I meant  
 15 by that so I could answer your earlier question more  
 16 completely. It's that sentence that is sort of the  
 17 textual reference to some of the things that we talked  
 18 about between TPL and the town in the meetings that  
 19 we've referred to.  
 20 Q So, on February 11th, the day before the acceptance of  
 21 the right of first refusal by TPL, is it your  
 22 testimony that you did not have specific terms of the  
 23 contract which you believed would allow you to not  
 24 perform under the contract?

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1 MS. FETOUH: Objection.  
 2 MR. CONROY: Objection.  
 3 A No, what I said was a little different than that.  
 4 What I meant to say was that, by using that sentence,  
 5 I was saying that, under Chapter 61, there are terms  
 6 of a contract that apply to an assignee and that,  
 7 depending on the circumstances, there are others that  
 8 don't apply.  
 9 Q So, based on the fact that you're an attorney and you  
 10 profess to know Chapter 61, can you tell me what terms  
 11 you think apply?  
 12 MS. FETOUH: Objection.  
 13 MR. CONROY: Objection. Let me say,  
 14 Mike, if I may, for the record, I have some  
 15 concern about Mr. MacDonnell being asked to  
 16 testify, effectively, as an expert, as a legal  
 17 expert. I think it's fair game to ask him what  
 18 was in his mind when he did what he did and how  
 19 that may have influenced him, but for him to be  
 20 asked to testify in general as to the meaning of  
 21 the law, I think is inappropriate. So, I object  
 22 on that basis.  
 23 MR. McLAUGHLIN: Okay. But I'm not  
 24 going to change the question.

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1 Q As an attorney, you have some understanding of  
 2 Chapter 61.  
 3 MR. CONROY: Excuse me. I will just  
 4 not repeat that.  
 5 MR. McLAUGHLIN: No, I understand.  
 6 MR. CONROY: But throughout the  
 7 deposition, I have that standing objection, okay?  
 8 MR. McLAUGHLIN: Yes.  
 9 MR. CONROY: Is that acceptable?  
 10 MR. McLAUGHLIN: That's acceptable.  
 11 Q Can you tell me, based upon your understanding of the  
 12 fact that, under Chapter 61, there are terms of a  
 13 contract that apply and terms of a contract that don't  
 14 apply, please tell me what terms apply.  
 15 MS. FETOUH: Objection.  
 16 A Because I don't have this contract in my mind as we're  
 17 talking about it, I can only tell you that sort of as  
 18 an example of a kind of a term that I don't think  
 19 would apply, a Chapter 61A contract that imagines a  
 20 full-scale development process whereby the purchaser  
 21 gets permits. Those kinds of provisions would sort of  
 22 be inapposite for an assignee to comply with under  
 23 Chapter 61.  
 24 Q And so, for example, under the terms of the contract

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1 in question, which anticipated a 40B development, you  
 2 did not feel compelled to put up a 40B development as  
 3 the assignee of the right of first refusal. Is that  
 4 fair to say?  
 5 A For example.  
 6 Q Yeah, okay. Do you recall ever meeting with the Town  
 7 of Stow Community Preservation Committee?  
 8 A Yes.  
 9 Q I'm going to put before you what will be marked as  
 10 Exhibit 8.  
 11 (WHEREUPON, Exhibit No. 8, minutes of  
 12 Stow CPC meeting, February 10, 2003, marked for  
 13 identification.)  
 14 Q And these are provided to us from the Town of Stow. I  
 15 note that they are doubled. They're printed on both  
 16 sides. I'm going to just have you look at one small  
 17 part of this document, and it's on the second page,  
 18 which is marked as 039, and it's a -- by the way, this  
 19 document is called Minutes of Meeting of February 10,  
 20 2003, and it says a committee member asked what  
 21 happens if CPC votes in favor and gets voted down at  
 22 the town meeting. TPL responded that they would be  
 23 under contract at that point and would have to make it  
 24 work. Do you recall whether the person that said that

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1 for TPL was you?  
 2 MR. CONROY: Objection.  
 3 MS. FETOUH: Objection.  
 4 A I recall discussing this issue at a meeting of CPC. I  
 5 don't know whether it was on February 10th.  
 6 Q February 10th would have been two days before the  
 7 assignment. Does that in any way refresh your  
 8 recollection?  
 9 A It would make sense.  
 10 Q And it would make sense that you were the person at  
 11 that point that would have been attending the  
 12 Community Preservation Committee meeting.  
 13 A Yes.  
 14 Q Given that, what did you mean when you said that TPL  
 15 would be under contract at that point and would have  
 16 to make it work?  
 17 A I don't know if I've testified that I actually said  
 18 that. I remember discussing it.  
 19 Q Do you have reason to believe that the minutes of the  
 20 meeting of February 10th of the Preservation Committee  
 21 are inaccurate with regard to this paragraph that I've  
 22 just read?  
 23 A I have no reason to think they are accurate or  
 24 inaccurate.

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## DEPOSITION OF CRAIG MACDONNELL

MINIDEP by Kenson

1 Q Well, you have no reason to believe that it's accurate  
2 or inaccurate?  
3 A I don't know anything about this document. I've seen  
4 it here this morning for the first time. So, I don't  
5 know anything about it.  
6 Q Well, let's go back. The document, Exhibit 8,  
7 purports to be minutes of a meeting of February 10th.  
8 Do you see that?  
9 A I do.  
10 Q And it's your testimony that you likely attended that  
11 meeting since it was two days before the assignment.  
12 A Yes.  
13 Q And so is your testimony that you have no comment as  
14 to the accuracy of the statement that TPL responded  
15 that they would be under contract at that point and  
16 would have to make it work? You have no comment as to  
17 whether that is inaccurate or accurate?  
18 A I just don't have a recollection of saying that;  
19 that's all.  
20 Q Do you remember being asked the question?  
21 A I don't remember being asked the question.  
22 Q Do you remember questions concerning what happens if  
23 the town meeting votes down this project?  
24 A I don't.

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1 Q Did in fact the town vote down the project?  
2 A No.  
3 Q Did the town have a vote to buy the project?  
4 A Yes.  
5 Q And it passed?  
6 A Correct.  
7 Q Is it fair to say, sir, that you were involved  
8 extensively in the drafting of a warrant for the town  
9 for a town meeting?  
10 A I remember participating in the drafting of a warrant  
11 article in Stow.  
12 Q And is it fair to say that that warrant involved the  
13 town purchasing the Kunelius property?  
14 A Yes.  
15 Q And is it fair to say that the town voted and they  
16 voted down the purchase?  
17 A My memory is they voted to approve that.  
18 Q Let's go back to Exhibit 6 for a second. Looking at  
19 Exhibit 6, which is right here, did you ever tell  
20 anyone that if you didn't get the town financial  
21 commitment of \$400,000 that it didn't matter? You  
22 were going to buy the property anyhow under the  
23 assignment of right of first refusal.  
24 A I don't remember that.

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1 Q Is it likely that you would have said that?  
2 MR. CONROY: Objection.  
3 A I don't know how to answer the is-it-likely question.  
4 Q Was the \$400,000 that is referred to in Exhibit 6 a  
5 requirement of TPL's acceptance of the assignment?  
6 MS. FETOUH: Objection.  
7 A No.  
8 Q So, if you didn't get the \$400,000, you were still  
9 going to accept the assignment. Is that correct?  
10 A Well, I believe the vote to authorize the expenditure  
11 post-dated the assignment. So, the decision whether  
12 to accept the assignment would occur before that would  
13 happen.  
14 Q Is it also true that if you didn't get the, quote,  
15 hoped for sale of the two parcels that that was not  
16 critical in whether or not you would accept the  
17 assignment?  
18 MS. FETOUH: Objection.  
19 MR. CONROY: Objection.  
20 A Well, likewise, the proposed sale of 142 and 144 Red  
21 Acre Road were going to post-date the assignment, so  
22 we would not have known then whether in fact those  
23 parcels would have sold. It would be later in time.  
24 Q Did you tell the Community Preservation Commission

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1 that it didn't matter whether you got the four hundred  
2 thousand from the town or whether you sold off  
3 portions of the property; you would still purchase the  
4 property?  
5 A I don't recall that.  
6 Q Do you recall telling that to anyone?  
7 A It not mattering --  
8 Q Yeah.  
9 A -- is your question? I don't recall using that --  
10 Q Did it matter? In other words, if the money wasn't  
11 given to TPL from the town, \$400,000, and if you  
12 couldn't sell the two lots, did you tell anyone that  
13 it didn't matter because TPL would purchase the  
14 property and pay the full asking price?  
15 A That's what I don't recall. I don't recall using that  
16 language.  
17 Q My question to you is: is that a fact that it didn't  
18 matter to TPL, that they were going to purchase it  
19 anyhow?  
20 A It was our complete and absolute intention to do this  
21 project and conserve this property and buy this  
22 property from Marilyn Kunelius. It's our business to  
23 do this. The reason I changed careers was to be  
24 involved in the environmental field. This is why I

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1 work at TPL. This is why we do this stuff. We fully  
2 intended -- from the very second we looked at this  
3 project, we would never have accepted the assignment  
4 unless we fully intended to do this.  
5 Q So, the answer --  
6 A Yes, the answer is we fully intended to buy this  
7 property.  
8 Q And what was your source of funds in the absence of  
9 the \$400,000 and the absence of the sale of parcels  
10 and in the absence of fund-raising? What would be the  
11 source of the funds that you would purchase the  
12 property with?  
13 MR. CONROY: Objection.  
14 MS. FETOUH: Objection.  
15 A We did not contemplate being able to do this project  
16 without finding adequate financial sources external to  
17 TPL to complete it.  
18 Q You never considered that?  
19 A What we considered was, as we consider in all our  
20 projects, is advocating as hard as we can for public  
21 money, if necessary for private sale money, and if  
22 necessary for private fund-raising money, and working  
23 as hard as we can to put that money together as we  
24 have in every one of our 61 projects in Massachusetts,

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1 and so we fully intended that the sources we had  
2 identified would come together and that we would be  
3 able to purchase this property.  
4 Q And did you consider what your obligations would be to  
5 Marilyn Kunelius if those sources did not pan out?  
6 MS. FETOUH: Objection.  
7 A Yes.  
8 Q And how did you consider dealing with that  
9 possibility?  
10 A We looked at the contract.  
11 Q You didn't consider any other assets or sources of  
12 funds, other than the three that we've already  
13 discussed, the money from the Town of Stow, sale of  
14 the private lots and fund-raising?  
15 A The obligation that TPL had was measured by the  
16 contract. So, it's natural for us to look at the  
17 contract to figure out what the scope of the  
18 obligation was, which is what we did.  
19 Q So, you looked at the contract. And is it fair to say  
20 you determined that, if we don't get the money from  
21 the Town of Stow and if we don't get the private sale  
22 from the two lots and we don't get fund-raising, then  
23 we'll claim that we don't have to purchase the  
24 property because of the liquidated damage clause? Is

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**DEPOSITION OF CRAIG MACDONNELL****MINIDEP by Kenson**

1 that correct?

2 MS. FETOUH: Objection.

3 A We read the liquidated damages clause and believed it

4 would apply in this case and -- well, I'll leave it at

5 that.

6 Q And you made that determination prior to the

7 acceptance of the assignment. Is that correct?

8 A Correct.

9 Q And that was because just the normal prudence would

10 suggest that you would have to have some contingency

11 for the possibility that you wouldn't have the town

12 financing, you wouldn't have the sale of the lots, and

13 you wouldn't have money from fund-raising. Your

14 normal procedure, due diligence and prudence, would

15 suggest that you would have to have some way to deal

16 with that, correct?

17 MR. CONROY: Objection.

18 MS. FETOUH: Objection.

19 A It's true that, when we scope a project, we look at

20 our legal obligations and make decisions in accordance

21 with them, absolutely.

22 Q And did you ever tell the Town of Stow prior to the

23 acceptance of the assignment, the right of first

24 refusal, that if you failed to accomplish obtaining

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1 money from the Town of Stow or from obtaining the

2 deeds or from fund-raising or selling property from

3 the deeds, that you would rely on the liquidated

4 damage clause and not purchase the property?

5 A Did I tell the Town of Stow?

6 Q Yes.

7 A About our analysis of the --

8 Q Yes.

9 A At some point, yes.

10 Q Prior to the time that you accepted the assignment,

11 did you tell them?

12 A I don't remember when I had that discussion.

13 Q Is there anything in Exhibit 6 that outlines,

14 specifically, that you intended to rely on the

15 liquidated damage clause if necessary?

16 MR. CONROY: Objection.

17 A Well, not explicitly. The sentence where I say that

18 we are bound by the applicable terms of the contract

19 is a summary, really, of normal Chapter 61 legal

20 analysis, which includes all of those terms.

21 Q Do you recall telling any public officials from the

22 Town of Stow that TPL had never failed at any time to

23 honor an assignment of a right of first refusal?

24 A Yes, I believe I did say that.

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1 Q And, in fact, do you remember telling public officials

2 of the Town of Stow that they had nothing to worry

3 about regarding indemnification because TPL, having

4 never failed, would find a way to purchase the

5 property to make Mrs. Kunelius whole?

6 A I remember discussing this issue with the town. I

7 don't recall the language I used.

8 Q But you do recall that you told the town that TPL had

9 never failed in the past to honor an assignment of a

10 right of first refusal.

11 A I do remember that, and I believe we honored it here.

12 Q So, I don't want to belabor a point, but I'm a little

13 confused. On one hand I thought you said that you had

14 every intention of going forward and purchasing the

15 property even if the three items outlined in your

16 letter of February 11th, Exhibit 6, were not achieved.

17 MR. CONROY: Objection.

18 Q And on the other hand you say that if you did not

19 achieve the three items on Exhibit 6, i.e., the money

20 from the town, the sale of private lots, the two

21 private lots, and fund-raising, that you would look to

22 the liquidated damage clause. So, which is it?

23 MR. CONROY: Objection.

24 MS. FETOUH: Objection.

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1 MS. ECKER: Objection.

2 Q Was the intention to go forward even if you didn't

3 have the three requirements that are outlined on

4 Exhibit 6, or was it your intention to rely on the

5 liquidated damage clause?

6 MR. CONROY: Objection.

7 MS. FETOUH: Objection.

8 A It was our intention at the beginning and throughout

9 most of this project to close no matter what because

10 that's the way TPL does its business, believing fully

11 that it would be possible to do so. It became

12 apparent at some point, despite all of our good

13 efforts, that the public and private money was not

14 going to make it to the table, and it was only after

15 realizing that there was, what TPL concluded was, an

16 unbridgeable cap between the money that was available

17 and the money that was needed that it became

18 impossible to go forward.

19 (WHEREUPON, Exhibit No. 9, printout of

20 TPL Web site, marked for identification.)

21 Q I'm going to put before you a document, Exhibit 9, and

22 ask you to take a look at it. This is a printout of

23 the TPL Web site. It was printed out on 3-23, 2005.

24 I'm going to ask you to look at the second page under

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1 Buying Time, which is about two-thirds of the way

2 down. It says: Timing is critical in today's real

3 estate markets, but public agencies may not have the

4 capacity or budget to move quickly to acquire land

5 when it becomes unavailable. Using our private

6 capital, TPL can bridge the gap to secure and hold

7 vital lands under the public acquisition process until

8 the public acquisition can gear up. Now, have I read

9 that correctly?

10 A The word available, I think you said unavailable, but

11 otherwise --

12 Q I'm sorry, becomes available. I apologize. But other

13 than that, have I read it correctly?

14 A I believe so.

15 Q Now, in your last answer, you talked about the fact

16 that you could not bridge the gap in the Kunelius

17 property, and my question is, for you: what are you

18 referring to when you say our private capital?

19 MR. CONROY: Objection.

20 Q Using our private capital, TPL can bridge the gap.

21 What is the private capital?

22 MS. FETOUH: Objection.

23 A Well, it's not what I mean, because it's really not my

24 creation.

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1 Q I understand.

2 A So, you're asking me what I believe TPL means?

3 Q Yes.

4 A Private capital is a generic term to describe lines of

5 credit and borrowed funds. Really, it's borrowed

6 funds to bridge gaps in conservation projects where

7 timing is a problem.

8 Q And so the term private capital from your point of

9 view is money that is borrowed by TPL?

10 A Yes.

11 Q That's private capital?

12 A Yes.

13 Q Is that definition of private capital your definition,

14 or do you think it has some greater understanding in

15 the public, that the term private capital means

16 borrowed funds?

17 MS. FETOUH: Objection.

18 MR. CONROY: Objection.

19 A I can only say what I believe it means here.

20 Q Do you know Rob Glassman?

21 A No.

22 Q You've heard of Rob Glassman?

23 A I may have, but I don't recall.

24 Q Robert Glassman?

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## DEPOSITION OF CRAIG MACDONNELL

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1 A I don't believe I know Robert Glassman.  
 2 Q What was the point where TPL determined that it could  
 3 not bridge the gap?  
 4 A It wasn't so much a point in time if you're using the  
 5 phrase bridge the gap to mean is it possible to do the  
 6 deal, or are you using it to mean borrow money? I'm  
 7 not quite sure.  
 8 Q I'm using it however you meant to use it when you said  
 9 the answer to one of the questions was that TPL made a  
 10 determination. These are not the exact terms, but you  
 11 said made a determination that they could not bridge  
 12 the gap to acquire the property, something to that  
 13 effect. So, using it however you meant to use it, my  
 14 question is: at what point did you determine that you  
 15 could not bridge the gap?  
 16 A Well, what I can tell you is that there was a gradual  
 17 dawning that this project had lots of problems  
 18 associated with it. So, there was no exact point in  
 19 time when we can say that's when we knew. It was a  
 20 very gradual awareness that dawned on TPL that this  
 21 project was troubled.  
 22 Q Now, in considering the term bridging the gap, if we  
 23 consider the gap on one side is the purchase price and  
 24 on the other side is the buyer, and if TPL is the

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1 buyer, can you identify for me specific TPL funds, not  
 2 borrowed funds, not state funds, not town funds, but  
 3 TPL funds, which were identified and earmarked for the  
 4 purchase of the Kunelius property?  
 5 A Can I identify those funds?  
 6 Q Yes.  
 7 A No.  
 8 Q Were there any TPL funds ever specifically earmarked  
 9 for the purchase of the property?  
 10 A I don't believe so.  
 11 (WHEREUPON, Exhibit No. 10, Stow  
 12 Finance Committee minutes, January 7, 2003,  
 13 marked for identification.)  
 14 Q So, from your point of view, TPL itself never had one  
 15 dollar of the purchase price at risk with regard to  
 16 this project. Is that correct?  
 17 MS. FETOUH: Objection.  
 18 MR. CONROY: Objection.  
 19 A I don't think that's my testimony. No, I wouldn't say  
 20 that.  
 21 Q What were the funds that TPL, of the purchase price,  
 22 now, what funds which were to make up the purchase  
 23 price were actually TPL's own monies?  
 24 MR. CONROY: Objection.

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1 A There were deposits made against the contract, the  
 2 amount of which I'm not quite certain of, but those  
 3 were TPL dollars.  
 4 Q Well, in fact, weren't those dollars that were donated  
 5 to TPL from the Friends of Red Acre?  
 6 A Some of them, I believe, were.  
 7 Q Weren't all of them, sir?  
 8 A I don't recall.  
 9 Q Is it likely that they were? Do you have any  
 10 recollection?  
 11 MR. CONROY: Objection.  
 12 MS. FETOUH: Objection.  
 13 A My recollection is that we did ask for a donation from  
 14 the Friends of Red Acre for some money up front. What  
 15 I can't remember is how much.  
 16 Q So, you don't remember how much of the earnest money  
 17 that was paid to Mrs. Kunelius was actually TPL funds  
 18 and how much had been raised by TPL through the  
 19 Friends of Red Acre. That's your testimony, correct?  
 20 MS. FETOUH: Objection.  
 21 A What I don't remember is how much, how many of the  
 22 dollars that were deposited with Mrs. Kunelius were  
 23 TPL dollars and how many were Friends of Red Acre  
 24 dollars.

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1 Q And as you sit here today, you cannot say with any  
 2 certainty that any of those monies that were -- you  
 3 used the word deposited. I used the word earnest  
 4 money. You cannot say with any certainty that any of  
 5 those dollars were TPL dollars. Isn't that fair to  
 6 say?  
 7 A I do not know where they came from.  
 8 Q Now, if we look at the document --  
 9 A Well, let me -- I'd like to clarify that. That's all  
 10 right. I'll leave it at that.  
 11 Q Let's look at Exhibit 10, which is before you, and  
 12 this is also from the Town of Stow. It's Finance  
 13 Committee meeting minutes, January 7, 2003, town  
 14 building draft. It appears to be: Fincom joins the  
 15 Board of Selectmen in a joint meeting at 7:15. It  
 16 begins -- I'm going to read just a couple of  
 17 sentences.  
 18 Craig MacDonnell from TPL and David Cobb  
 19 from the Friends of Red Acre are present. The  
 20 Trust for Public Land is a national non-profit  
 21 organization that helps communities achieve  
 22 effective use in conservation land planning.  
 23 TPL, responding to the Stow Conservation Trust  
 24 and Friends of Red Acre, proposes that Stow

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1 exercise the right of first refusal at the  
 2 Kunelius land. TPL would like to bear 50 percent  
 3 of the 1.2 million dollar cost of the land. Do  
 4 you see that?  
 5 A I do.  
 6 Q Now, were you present at that meeting?  
 7 A As with respect to the other minutes --  
 8 Q Well, this is a joint meeting, so it's Fincom and the  
 9 Board of Selectmen. And so the question --  
 10 A My name is listed as being there. I have to say to  
 11 you, just in being honest, I don't, as I sit here this  
 12 morning, have an independent recollection of being at  
 13 this meeting.  
 14 Q Do you recall telling them that TPL would bear 50  
 15 percent of the cost of 1.2 million dollars?  
 16 A No.  
 17 Q Do you have any reason to believe that these minutes  
 18 are inaccurate with regard to that statement?  
 19 MR. CONROY: Objection.  
 20 MS. FETOUH: Objection.  
 21 A Yes, I do.  
 22 Q And in what regard are they inaccurate?  
 23 A I would not have said, I do not believe, that we would  
 24 bear 50 percent of the cost. That was not the project

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1 structure that we were considering. So, I have to  
 2 assume that these minutes are inaccurate and just  
 3 not -- it doesn't jive with what was going on.  
 4 Q And that's because you never told anyone you'd pay 50  
 5 percent of the costs for the acquisition. Is that  
 6 fair to say?  
 7 A It is fair to say.  
 8 Q So, going further down, there is a sentence about one-  
 9 third down that says: TPL would buy the property and  
 10 would actually own it. And on the left-hand side,  
 11 there's a word, household, would be in the amount of  
 12 17.50 for ten years, and it picks up right there, just  
 13 about halfway down. TPL would buy the land and  
 14 actually own it.  
 15 A I see that.  
 16 Q So, what was TPL intending to use as a source of  
 17 income based on -- well, strike that.  
 18 Do you have reason to believe that this  
 19 statement is inaccurate as well, that is, TPL  
 20 would buy the property and actually own it?  
 21 A It would be consistent with the project design for TPL  
 22 to buy the property in September, I think it was, of  
 23 that year, subdivide it and then convey out the  
 24 pieces.

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**DEPOSITION OF CRAIG MACDONNELL****MINIDEP by Kenson**

1 Q Now, at the time, in January of 2003, you had not  
2 identified a specific amount of money necessary from  
3 the town in order to accept an assignment. Is that  
4 correct?  
5 A Well, I think there was a discussion about four  
6 hundred thousand.  
7 Q And that discussion, you expect, was prior to  
8 January 7, 2003?  
9 A I would say that it is, in part, having my  
10 recollection refreshed by the reference to four  
11 hundred thousand in this paragraph.  
12 Q The purchase was approximately 1.2. That's fair to  
13 say, right?  
14 A It was a little under that.  
15 Q A little under. Four hundred thousand dollars  
16 subtracted from the 1.2 would leave \$800,000,  
17 approximately, correct?  
18 A Approximately.  
19 Q And you expected to make some money from the sale of  
20 the two lots. Did you have any expectation of what  
21 that would be on or about January 7th of 2003?  
22 A Is your question how much TPL thought we would sell  
23 142 and 144 for?  
24 Q Yes.

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1 A And if we knew that at this moment in time?  
2 Q Yes.  
3 A I have a recollection of what, ultimately, we expected  
4 to sell those for, but I can't say whether at this  
5 moment in time I knew or I had that number in my mind.  
6 Q What is your recollection of what it ultimately would  
7 sell for?  
8 A Well, there's two pieces. I think the hope was that  
9 142 would sell for between two and three hundred and  
10 that 144 would sell for more. How much, I can't  
11 remember right now.  
12 Q So, if we have 300,000 and 700,000, I'm sorry, 300,000  
13 and 400,000, meaning 300,000 from one sale, 400,000  
14 from the town, and another 300,000 from the second  
15 lot, approximately, how did you anticipate making up  
16 the difference at that point?  
17 MS. FETOUH: Objection.  
18 A Well, I think there were other project costs as well.  
19 I mean, some of these properties needed to have  
20 renovation before they could be sold. So, I don't  
21 know what sum we were trying to achieve, but there was  
22 an intention to raise money privately.  
23 Q Have you ever read the complaint?  
24 MS. FETOUH: Objection. In this

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1 matter?  
2 MR. McLAUGHLIN: No, the complaint in  
3 the matter has nothing to do with this.  
4 MR. CONROY: That's not necessary.  
5 MR. McLAUGHLIN: All right. Well, I  
6 mean, neither is the question. If you are asking  
7 that question, Madam, tell me what other  
8 complaint you could possibly be considering.  
9 MR. CONROY: Let's move on.  
10 MS. FETOUH: My objection has been  
11 noted.  
12 Q All right. Have you ever read the complaint in this  
13 matter?  
14 A I have skimmed through it.  
15 Q And did you read your answer in this matter prior to  
16 it being filed with the court?  
17 A Yes.  
18 Q Did you check it to make sure it was truthful and  
19 accurate?  
20 A I believe I did.  
21 Q Do you recall having a telephone discussion with  
22 Marilyn Kunelius after TPL accepted the assignment?  
23 A I remember trying to reach Mrs. Kunelius, and I also  
24 remember trying to reach her attorney then, Peter

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1 Kachajian. I remember having difficulty reaching both  
2 of them, but I believe I recall talking to one or both  
3 of them at some point during that time.  
4 Q Do you recall talking to Mrs. Kunelius before the  
5 assignment?  
6 A I don't remember when I first talked to Mrs. Kunelius.  
7 Q I'm going to just quickly read something from the  
8 complaint. This is Paragraph 20 of the complaint.  
9 Shortly after TPL notified Kunelius of the  
10 assumption of Stow's exercise of right of first  
11 refusal, Kunelius and her counsel met with  
12 MacDonnell. During that meeting, Kunelius  
13 informed MacDonnell that the property was the  
14 sole asset of Kunelius, that she was a single  
15 woman supporting herself and the sole care-giver  
16 to her 91-year-old mother -- should have been  
17 father -- and that the sale of the property under  
18 the terms of the P&S were critical to her  
19 financial well-being and financial stability.  
20 Kunelius informed MacDonnell that she was relying  
21 on his representations that TPL would acquire the  
22 property under the terms of the P&S. MacDonnell  
23 acknowledged to Kunelius and her attorney that  
24 the acquisition of the property by TPL was a

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1 certainty.  
2 Do you recall that discussion with  
3 Mrs. Kunelius?  
4 MR. CONROY: Objection.  
5 A As I said a minute ago, I recall an early discussion,  
6 but as I sit here this morning, I can't remember all  
7 of the details of it.  
8 Q Your answer to this was: MacDonnell admits that he  
9 met with Kunelius and her attorney on several  
10 occasions and was informed that Kunelius was a single  
11 woman caring for her elderly father and that Kunelius  
12 wanted to sell the property. Except as expressly  
13 admitted, MacDonnell denies the allegations in  
14 Paragraph 20 of the complaint.  
15 As you sit here today, is it your testimony  
16 that you have no recollection of telling  
17 Mrs. Kunelius that the sale was a certainty?  
18 A That is my testimony.  
19 Q And is it your testimony you would never have told  
20 Mrs. Kunelius that the sale was a certainty?  
21 MR. CONROY: Objection.  
22 A No, my testimony is that I don't recall using that  
23 word.  
24 Q Are you testifying that you did not use the word or

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1 that you do not recall using the word?  
2 A I have no recollection of that word being used in that  
3 conversation.  
4 Q So, is your testimony concerning the word certainty as  
5 opposed to the concept that the sale would most  
6 certainly occur?  
7 A It is both. I do not believe that I used the word  
8 certainty, as I sit here this morning, but I do not  
9 recall using it or not using it.  
10 Q So, as you sit here today, you cannot deny with any  
11 certainty at all that you had a discussion with her in  
12 which you told her that she did not have to worry  
13 about this sale because it would occur.  
14 MR. CONROY: Objection.  
15 MS. FETOUH: Objection.  
16 MS. ECKER: Objection.  
17 A I believed it would occur. Whenever TPL goes into  
18 these projects, it is our one hundred percent belief  
19 and we are very confident that the deals go through,  
20 and in every one of the other Chapter 61 cases that  
21 TPL has worked on, it has gone through. So, I would  
22 have had confidence that this one would go through.  
23 Q In fact, you told her that every other TPL sale went  
24 through. Do you recall telling her that?

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## DEPOSITION OF CRAIG MACDONNELL

MINI Dep by Kenson

1 MS. FETOUH: Objection.  
 2 A I do not recall telling Mrs. Kunelius that. I  
 3 remember saying that to others through the course of  
 4 this project.  
 5 Q Is it likely, therefore, that you may have also said  
 6 it to her?  
 7 MR. CONROY: Objection.  
 8 MS. FETOUH: Objection.  
 9 A I can't use the word likely because I don't --  
 10 Q Is it possible?  
 11 A It is possible because I believed it would occur.  
 12 Q Now, do you recall saying to Mrs. Kunelius during that  
 13 meeting that TPL already had all of the money  
 14 assembled necessary to make the purchase?  
 15 A No, I don't remember that.  
 16 Q Did TPL have the money already assembled to make the  
 17 purchase?  
 18 A We had identified the money from the town, what we  
 19 thought we would get from the sale of the two lots and  
 20 the hoped for fund-raising. So, those were funds we  
 21 expected to bring to the table.  
 22 Q Was it your intention to pay Mrs. Kunelius with the  
 23 funds from the sale of the two lots after you acquired  
 24 it, or were you going to pay her the full purchase

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1 price when you acquired the property?  
 2 MR. CONROY: Objection.  
 3 A I don't believe that had been determined.  
 4 Q So, as you sit here today, you do not even know  
 5 whether TPL intended to provide Mrs. Kunelius with the  
 6 full purchase price on the date of the closing or  
 7 whether the full purchase price was dependent upon the  
 8 subsequent sale by TPL of the two lots. Is that fair  
 9 to say?  
 10 A No, that's not what I'm saying. I'm saying something  
 11 different. I can clarify it if you'd like.  
 12 Q I would.  
 13 A I believe the contract had a mortgage provision. So,  
 14 when you ask the question whether or not TPL was going  
 15 to deliver the full amount, I don't believe it had  
 16 been decided whether or not it was appropriate to  
 17 utilize the mortgage provision or not.  
 18 Q In other words, take back a mortgage from  
 19 Mrs. Kunelius.  
 20 A To do whatever the contract said with respect to that.  
 21 MR. McLAUGHLIN: Okay. It's now a  
 22 little after 12:30, so we'll stop and pick it up  
 23 in a half hour or so.  
 24 MR. CONROY: Okay.

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1 (Luncheon recess, 12:34 P.M.)  
 2 (After recess, 1:16 P.M.)  
 3 (All parties present)  
 4 MR. McLAUGHLIN: Just as a housekeeping  
 5 matter, in the room is Peter Kachajian who has  
 6 been co-counsel with me on this matter and  
 7 Mrs. Kunelius' attorney for many years and also  
 8 David Norris who is Mrs. Kunelius' husband, and  
 9 so counsel for Mr. MacDonnell has requested that  
 10 since they are both likely to be witnesses, that  
 11 when there is any discussion in which there's  
 12 testimony relating to something that they are  
 13 also going to testify to, that they leave the  
 14 room, and so is that acceptable to everybody?  
 15 MS. ECKER: Yes.  
 16 MS. FETOUH: Yes.  
 17 MR. McLAUGHLIN: So, I think I know  
 18 where you're going to testify, but if you think  
 19 so, then just get up and leave. Otherwise, I'll  
 20 ask you to leave when I think it is -- but don't  
 21 let me mistake that it is.  
 22 MR. KACHAJIAN: So, if I storm out, no  
 23 one will take it personally.  
 24 MR. McLAUGHLIN: That's correct.

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1 MR. CONROY: Unless you let us know  
 2 that we're supposed to take that personally.  
 3 MR. KACHAJIAN: Oh, you'd know.  
 4 MR. CONROY: Okay.  
 5 By MR. McLAUGHLIN:  
 6 Q Okay. Just going back to, I think, the last thing  
 7 that we were talking about, and you had mentioned,  
 8 sir, that there was the possibility of taking back a  
 9 mortgage, which was referred to in the purchase and  
 10 sale agreement. Do you remember that?  
 11 A I do.  
 12 Q So, as I understand it, that mortgage was  
 13 approximately \$400,000 that Mrs. Kunelius was willing  
 14 to grant to Mosaic Commons in their purchase and sale  
 15 agreement. Is that right?  
 16 A I don't remember the amount.  
 17 Q Do you remember approximately what it was?  
 18 A We could take a quick look at the contract. I don't  
 19 remember the amount.  
 20 Q I'm going to represent to you that it was \$400,000 or  
 21 thereabouts.  
 22 A Okay.  
 23 Q Assuming that to be a fact, and we will look at the  
 24 purchase and sale agreement shortly, that would mean

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1 that out of the 1.116 million of the purchase price,  
 2 that approximately \$800,000 was accounted for by way  
 3 of the mortgage that she was willing to give back and  
 4 the \$400,000 that you were receiving from the Town of  
 5 Stow. Is that correct?  
 6 A I'm not sure I understand your question. You're  
 7 saying that if you add up those --  
 8 Q Yeah, at the time that you have to close under the  
 9 terms of the purchase and sale agreement, if you  
 10 assumed all of the obligations and rights of Mosaic  
 11 Commons, the purchase price would have been assembled  
 12 by way of \$400,000 from the town and taking back a  
 13 mortgage note of \$400,000 from Mrs. Kunelius, leaving  
 14 approximately \$400,000 of additional cash that had to  
 15 be put in at the time of the closing to effectuate the  
 16 sale. Is that fair to say?  
 17 A There's one wrinkle to that. There may be more than  
 18 one wrinkle. The town's vote was split in two parts,  
 19 a three hundred thousand dollar component for open  
 20 space and a one hundred thousand dollar component that  
 21 I believe was split into two fifty thousand dollar  
 22 pieces attached to the sales of the two structures as  
 23 affordability restrictions, and it was my memory that  
 24 the town was uninterested in contributing the one

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1 hundred thousand affordability dollars until those  
 2 properties had been renovated and were sort of up to  
 3 snuff, if you will. So, that one hundred might come  
 4 in sometime later.  
 5 Q So, is it fair to say that between 700- and \$800,000,  
 6 perhaps 700,000 if your understanding is correct,  
 7 would have been funds already accounted for in order  
 8 to effectuate the purchase of the Kunelius property,  
 9 leaving either 4- or \$500,000, approximately, that  
 10 needed to be found in order to complete the purchase?  
 11 A So, you would start with the three hundred open space  
 12 money?  
 13 Q Yes.  
 14 A And to that, what would you add?  
 15 Q The four hundred thousand dollar mortgage that  
 16 Mrs. Kunelius agreed to give back to Mosaic  
 17 Commons, which you had said earlier you had  
 18 considered.  
 19 A Considered.  
 20 Q Yeah.  
 21 A We had considered.  
 22 Q Right.  
 23 A Right.  
 24 Q Okay. So, given that, that would be a total of

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1 \$700,000 that would have been available at the time of  
 2 the closing, given the fact that 400,000 was a note,  
 3 and that TPL would have to come up with between 4- and  
 4 \$500,000 of additional funds at the closing in order  
 5 to effectuate the sale.  
 6 A If there was a way to take advantage of the mortgage,  
 7 but ultimately we concluded that there wasn't.  
 8 Q And you concluded that there wasn't because, isn't it  
 9 fair to say, that TPL voted not to borrow the money  
 10 from Mrs. Kunelius?  
 11 A The reason that the mortgage didn't seem to be helpful  
 12 for TPL is that it would have required that the  
 13 property be subject to a mortgage and that --  
 14 Q Right. And -- go ahead.  
 15 A I was going to say that it was the town's insistence  
 16 that, if they're going to spend their money, they're  
 17 going to get a property interest for it. The town  
 18 would be uninterested in getting the property interest  
 19 that they were teeing up, which is the 45 acres,  
 20 subject to a mortgage.  
 21 Q So, it's fair to say that there was an independent  
 22 decision by TPL not to avail itself of the four  
 23 hundred thousand dollar mortgage that was part of the  
 24 purchase and sale agreement. Isn't that fair to say?

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1 MS. FETOUH: Objection.  
 2 A It didn't seem that it would work.  
 3 Q So, you had testified earlier that, according to your  
 4 understanding of Chapter 61, there were certain  
 5 provisions that were applicable on an assignment under  
 6 Chapter 61 and certain provisions that were not. My  
 7 question now is relative to the purchase price itself,  
 8 which includes components such as mortgage provisions.  
 9 Is it your testimony today that, prior to  
 10 accepting the assignment, you had concluded that  
 11 you would not comply with the mortgage provision  
 12 because TPL didn't like the effect of that  
 13 mortgage provision?  
 14 MS. FETOUH: Objection.  
 15 A I can't recall when, in the sequence of this long  
 16 project, the mortgage problem came up, so I just don't  
 17 have that recollection, but somewhere along the way  
 18 that issue was considered and it resulted in sort of  
 19 an awareness. It's not so much a decision, an  
 20 awareness that it just wasn't going to be helpful.  
 21 Q But the term of the mortgage was clearly stated in the  
 22 purchase and sale agreement that was provided to you  
 23 and to the town at the time that the town considered  
 24 the exercise of the right of first refusal or the

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1 assignment thereof. Is that fair to say?  
 2 A Was the mortgage provision in the contract?  
 3 Q Yeah.  
 4 A Yes.  
 5 Q So, it didn't come as a surprise to you or to the town  
 6 that, as a result of complying with the terms of the  
 7 contract, there would be a mortgage on the property  
 8 for some period of time until the final \$400,000 was  
 9 paid off. Is that correct?  
 10 MS. FETOUH: Objection.  
 11 A Not necessarily. I mean, I think part of TPL's  
 12 analysis was not so much to conclude ahead of time,  
 13 early in the game, whether or not the mortgage was  
 14 helpful or not helpful or something that we'd take  
 15 advantage of or not. It was just there.  
 16 Q So, from your point of view, that term, that mortgage,  
 17 was an option available to you but not something that  
 18 you were required to do. Is that fair to say?  
 19 MS. FETOUH: Objection.  
 20 A You know, I don't know whether using the term option  
 21 is the right way to describe it. I remember reading  
 22 the provision and sometime later figuring out that it  
 23 was problematic to use it and that we needed to  
 24 wrestle with that issue.

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1 Q Do you recall being told by Mrs. Kunelius --  
 2 MR. McLAUGHLIN: Could you step out?  
 3 MR. KACHAJIAN: Yes.  
 4 (Messrs. Kachajian and Norris exit the room.)  
 5 Q Do you recall being told by Mrs. Kunelius or her  
 6 counsel that the mortgage provision remained available  
 7 to TPL after TPL accepted the assignment?  
 8 A I don't remember that. I remember having a discussion  
 9 with somebody within Mrs. Kunelius' team about the  
 10 mortgage, but I don't recall exactly what we said.  
 11 Q Do you recall, generally, that perhaps Mr. Kachajian  
 12 had a discussion with you concerning the fact that  
 13 Mrs. Kunelius remained open to the application of that  
 14 provision of the contract to TPL?  
 15 A As I think I said, I don't remember that.  
 16 Q So, you don't even remember Mr. Kachajian saying that?  
 17 A I don't remember anybody expressing the availability  
 18 of a mortgage provision. I remember having a  
 19 discussion about the mortgage provision.  
 20 Q At some point, the issue came up concerning looking  
 21 for additional funds from the state. Do you recall  
 22 that?  
 23 A Yes.  
 24 Q What were the funds that were being sought from the

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1 state and what were the purposes of those funds?  
 2 A The funds sought were a grant from DHCD, which I  
 3 believe stands for the Department of Housing and  
 4 Community Development.  
 5 Q And what were they for?  
 6 A My memory is that they were a grant which would help  
 7 facilitate the conversion of the units to affordable  
 8 structures, affordable housing.  
 9 Q Do you remember what the amount was that you sought  
 10 from the Commonwealth?  
 11 A I believe it's three hundred and fifty thousand.  
 12 Q And do you recall that it was initially 125,000 and  
 13 then it was increased to 350 or 325?  
 14 A No.  
 15 Q So, you don't recall any circumstances in which there  
 16 was a need to increase the amount of the application.  
 17 You don't recall anything related to that?  
 18 A I don't.  
 19 Q Going back to the conversation and/or meeting with  
 20 Mrs. Kunelius and her attorney, I believe your answer  
 21 indicated that you remembered that this was her  
 22 retirement. I think that's what you said, that you  
 23 realized it was her retirement, but I probably -- let  
 24 me just read his answer to make sure I'm saying that

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1 correctly.  
 2 MR. CONROY: You mean the answer to the  
 3 complaint?  
 4 MR. McLAUGHLIN: Answer to the  
 5 complaint.  
 6 MR. CONROY: Are you going to put it in  
 7 front of him?  
 8 MR. McLAUGHLIN: Yeah.  
 9 Q All right. So, here's what it says. If you can just  
 10 read your response. It's 20. That's to the telephone  
 11 conversation.  
 12 A You want me to read this?  
 13 Q Yes.  
 14 A Number 20?  
 15 Q Yes.  
 16 A MacDonnell admits, or, quote: MacDonnell admits that  
 17 he met with Kunelius and her attorney on several  
 18 occasions and was informed that Kunelius was a single  
 19 woman caring for her elderly father and that Kunelius  
 20 wanted to sell her property. Except as expressly  
 21 admitted, MacDonnell denies the allegations in  
 22 Paragraph 20 of the complaint.  
 23 Q Would it refresh your memory if I told you that,  
 24 during that discussion, Mrs. Kunelius will testify

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1 that you told her that you had several million dollars  
 2 available for the purchase in-hand at the time that  
 3 you had the telephone discussion, in-hand?  
 4 A It would not.  
 5 Q Do you recall telling anyone that TPL, and when I say  
 6 you, I mean TPL under that circumstance, so if I  
 7 replace the word you having the money with TPL, would  
 8 your answer still be the same? I wasn't implying that  
 9 you had the money but that TPL had the money.  
 10 MR. CONROY: Will you state it again?  
 11 A Could you just ask the question?  
 12 Q Would it refresh your memory if you were to learn that  
 13 Mrs. Kunelius would testify that you told her that you  
 14 had several million dollars, that TPL had several  
 15 million dollars of funds in-hand, available to it  
 16 immediately, for the purchase of the property?  
 17 A It would not.  
 18 Q Are you testifying that you didn't say that or that  
 19 you don't recall saying that?  
 20 A I don't have a recollection of that conversation, so  
 21 that's sort of the sum total of what I can say about  
 22 it.  
 23 Q So, you're not saying for certain that you didn't say  
 24 it. You're only saying that you don't have a

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1 recollection of saying it.  
 2 A There is nothing in my memory that suggests to me that  
 3 I said that.  
 4 Q Is there anything in your memory that suggests that  
 5 TPL, at that time, had several million dollars of  
 6 funds available to it on a fairly immediate basis that  
 7 would allow for the purchase of the property without  
 8 any other source other than the TPL funds themselves?  
 9 A I'm sorry to make you do this, but I think I need to  
 10 have you say that again.  
 11 Q Is there anything that you can recall that would  
 12 suggest that TPL had several million dollars available  
 13 to it to buy the property at the time that you had a  
 14 discussion with Mrs. Kunelius, this discussion  
 15 referred to in Paragraph 20?  
 16 A No.  
 17 Q Did you ever tell Mrs. Kunelius that you had the  
 18 equivalent of a Plan A or Plan B and a Plan C,  
 19 something like that, so that no matter what happened  
 20 the sale would go forward?  
 21 A I don't.  
 22 Q You don't recall telling her that, correct?  
 23 A Right.  
 24 Q Did you have a Plan A or a Plan B or a Plan C to

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1 ensure that the sale would go forward even if Plan A  
 2 failed or Plan B failed?  
 3 A Well, the way TPL crunches these projects, generally,  
 4 is with a Plan A, the set of circumstances that we  
 5 hope will work, and I'd say in, you know, nine out of  
 6 ten projects, what feels like Plan A actually is  
 7 utilized but that there are, in most projects, a  
 8 number of variables that result in some things  
 9 changing. So, at the beginning of a project, it's  
 10 very common that Plan A becomes Plan B. I don't  
 11 recall this discussion using those terms.  
 12 Q Do you have specific expertise in your role as the  
 13 state director, Massachusetts state director, in  
 14 applying for loans from DH, whatever, Department of  
 15 Housing and Community Development?  
 16 A No.  
 17 Q You are aware, are you not, that TPL made an  
 18 application for funds to the Department of Housing and  
 19 Community Development?  
 20 A Yes.  
 21 Q And you are aware that TPL itself filled out the  
 22 application for those funds, which were the 325- or  
 23 \$350,000 that you referred to earlier, correct?  
 24 A We hired a consultant who knows more about this

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1 process than we do to help us do that, but together  
 2 with him, we prepared it.  
 3 Q And do you know who prepared it from TPL?  
 4 A Together with the consultant?  
 5 Q Yes.  
 6 A Yes, I do.  
 7 Q Who is that?  
 8 A Chris LaPointe.  
 9 Q And what's Chris LaPointe's position?  
 10 A Project manager.  
 11 Q And does he report to you?  
 12 A He does.  
 13 Q And do you recall working with Ross Perry in reviewing  
 14 the application to DHCD?  
 15 A Yes.  
 16 Q I'm going to put before you what is now going to be  
 17 marked as 11.  
 18 (WHEREUPON, Exhibit No. 11, DHCD grant  
 19 application, marked for identification.)  
 20 Q I'm putting before you Exhibit 11, and just for the  
 21 record, this is a compilation of various documents  
 22 received from the town, beginning with Bate stamp  
 23 number KUN336 and continuing to 411, the first page of  
 24 which is a document that appears to be sent by Ross

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1 Perry, project management of BNC/LID/Interconnect, to  
 2 someone by the name of Bill, and the first sentence  
 3 says: I left at your door the DHCD grant application  
 4 that TPL has filled out.  
 5 Do you recall receiving a copy of this?  
 6 A Of the cover memo?  
 7 Q The whole thing.  
 8 A I have a recollection of seeing the application before  
 9 it was submitted, whether this is the application that  
 10 you have in front of me or it has, you know, more  
 11 things here, I just don't know.  
 12 Q This appears to us, having gone through the documents  
 13 received from the town, that this is the application  
 14 minus the signature of TPL. The second page appears  
 15 to be the signature of Ross Perry on 3-30-03. Do you  
 16 see that?  
 17 A 3-3 --  
 18 Q 3-30-03, second page.  
 19 A 337?  
 20 Q No, down at the bottom, his signature.  
 21 A Oh, I'm sorry. I was reading the Bate's number. Yes,  
 22 I see that.  
 23 Q I direct you to the first page again, which says: Let  
 24 Craig MacDonnell and me know if there are any

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1 questions.  
 2 Do you know from looking at this who Bill  
 3 is?  
 4 A I would guess that it's Bill Wrigley.  
 5 Q And Bill Wrigley is the town administrator?  
 6 A Either administrator or manager. I can't remember his  
 7 title.  
 8 Q And at the bottom, it says: Craig can be reached at  
 9 617-367-6200. Is that the TPL number?  
 10 A Yes.  
 11 Q Now, I have a couple of questions here which, I must  
 12 admit, confuse me. So, if I can direct your attention  
 13 to Page 342, under the Financing Mechanism, and it's a  
 14 paragraph with a one, Financing Mechanism.  
 15 A Uh-huh.  
 16 Q And the second paragraph says: TPL is prepared to  
 17 purchase the property. TPL has a primary plan and a  
 18 fallback plan. The primary plan envisions a  
 19 multilateral funding approach to this project. Some  
 20 of the funding is contingent, as explained below, but  
 21 all of it is subject to a fallback plan, fallback line  
 22 of credit from Wainwright Bank. Do you see that?  
 23 A I do.  
 24 Q So, earlier I had asked you if you knew a man by the

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1 name of Rob or Robert Glassman. Do you recall me  
2 asking you that?  
3 A I do.  
4 Q Do you know who Robert Glassman is now?  
5 A No.  
6 Q I will represent to you that he was on the board of  
7 your advisors at the time that this application was  
8 made, a Robert Glassman. Does that ring a bell?  
9 A No.  
10 Q If I told you he was the president and founder of  
11 Wainwright Bank, would that ring a bell to you?  
12 A No.  
13 Q Were you aware that there was a line of credit at  
14 Wainwright Bank that was available as a fallback to  
15 the financing of this purchase from Mrs. Kunelius?  
16 A I am familiar that TPL has a line of credit with  
17 Wainwright Bank.  
18 Q Are you familiar that it was described as a fallback  
19 for the funding, as a contingency for the funding, of  
20 the purchase of Mrs. Kunelius' property?  
21 A Well, I see it written here, and it does remind me  
22 that there was some discussion about using Wainwright.  
23 Q And did you participate in the application for a line  
24 of credit to Wainwright Bank?

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1 A No.  
2 Q Who would have made application on behalf of TPL to  
3 Wainwright Bank?  
4 MR. CONROY: Objection.  
5 A It's a standing line of credit. There's no  
6 application involved.  
7 Q Does TPL have a standing line of credit right now with  
8 Wainwright Bank?  
9 A Yes.  
10 Q What is the amount of that line of credit?  
11 A I don't know.  
12 Q Let me turn you to the next page, and before I do,  
13 let's stay on the same page and look at TPL's primary  
14 plan to generate funds, and it has a chart, and then  
15 it says: A. Town funds. B. Red Acre. C. The DHCD  
16 funds -- which are the subject of this application --  
17 and D. Private financing. Do you see that?  
18 A I do.  
19 Q Right after that, it says, quote:  
20 MR. CONROY: Excuse me. Private fund-  
21 raising.  
22 MR. McLAUGHLIN: I'm sorry. Private  
23 fund-raising.  
24 Q After that, it says: As a fallback position, if any

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1 or all of the above-referenced sources of funds are  
2 unavailable, TPL intends to utilize capital from the  
3 private market. In this regard, TPL has available for  
4 its use a line of credit from Wainwright Bank in the  
5 amount of \$6,000,000 -- and it's written as 6,000,000  
6 with a dollar sign -- as evidenced by the letter  
7 attached as Exhibit -- blank. The use of this capital  
8 is subject to TPL's internal approval process,  
9 including customary due diligence and approval of the  
10 Board of Directors.  
11 Now, at the time -- did I read that  
12 correctly? Let's make sure I read that  
13 correctly.  
14 A I didn't follow you close enough to do that.  
15 Q Okay. All right. Well, your counsel hasn't corrected  
16 me, so I probably did.  
17 MR. CONROY: Minor.  
18 MR. McLAUGHLIN: Okay.  
19 MR. CONROY: Minor failings but  
20 otherwise substantively accurate.  
21 MR. McLAUGHLIN: That's the best thing  
22 anybody's said to me in a long time.  
23 THE WITNESS: He's very kind.  
24 Q Is today the first time that you have become aware

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1 that there was a six million dollar line of credit  
2 available to TPL for the purchase of the property if,  
3 quote, any or all of the above-referenced sources  
4 listed on Page 343 and 342 were unavailable?  
5 A I was familiar with the Wainwright line of credit  
6 before today.  
7 Q And so you were aware that, should the funds that you  
8 sought from the town fail, TPL intended to use the  
9 line of credit. Is that fair to say?  
10 MR. CONROY: Objection.  
11 MS. FETOUH: Objection.  
12 A No, it's fair to say that TPL could use that line of  
13 credit if necessary and subject to due diligence and  
14 approval.  
15 Q But it doesn't say that. It says: TPL intends to  
16 utilize the capital from the private market. In this  
17 regard, it has available for its use a line of credit.  
18 Do you see that?  
19 A I do.  
20 Q Doesn't say could, might. It says intends to. Is  
21 that correct?  
22 A Well, the word in the document is intends.  
23 MR. CONROY: I'll point out for the  
24 sake of completeness that there is other language

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1 that follows on that same page, Counsel.  
2 MR. McLAUGHLIN: I'm going to get to  
3 that.  
4 MR. CONROY: Okay.  
5 Q You're aware, are you not, in this litigation that TPL  
6 has made representations to the federal court that TPL  
7 did not have the money to purchase the property? Are  
8 you aware of that?  
9 MR. CONROY: Objection.  
10 A As I sit here today?  
11 Q Yeah.  
12 A I am not sure I am aware of that.  
13 Q Did you review the documents filed on behalf of TPL in  
14 the current litigation?  
15 A On behalf of TPL or myself?  
16 Q Yes, on behalf of TPL.  
17 A I believe I saw them before they were filed, yes.  
18 Q And did you review the documents that were filed on  
19 your behalf?  
20 A I did.  
21 Q And do you recall seeing statements to the federal  
22 court indicating that TPL did not have the money to  
23 purchase the property and that that's the reason that  
24 the property purchase did not go forward?

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1 A Well, in fact, TPL did not have the money.  
2 Q I thought you just said that TPL has a line of credit.  
3 A The line of credit is not our money. It's somebody  
4 else's money.  
5 Q Is it your testimony today that TPL did not intend to  
6 use the line of credit as a way of paying for the  
7 property if all other sources failed?  
8 A Our intention with respect to the use of any borrowed  
9 money has to be decided in the context of what's  
10 possible. So, here, utilizing the six million dollar  
11 line of credit, being subject as it is to due  
12 diligence and approval of the Board of Directors, TPL  
13 could only borrow that money if the project manager,  
14 in this case me, went to the Board of Directors and  
15 said, "Can I use this money?" And there's a process,  
16 an internal process, for getting that approval.  
17 Q I want to direct your attention to the Motion to  
18 Dismiss of the Defendants, Trust for Public Land and  
19 Craig A. MacDonnell and the Town of Stow, and in this  
20 motion, beginning on Page 1, is the following  
21 statement: However, after paying thousands of dollars  
22 in deposits required under the agreement, TPL found  
23 itself unable to raise the money necessary to fund the  
24 project and was unable to complete its purchase of the

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1 property. Do you see that?  
 2 A Yes.  
 3 Q Now, you were not unable to raise the money because  
 4 you had a six million dollar line of credit, but you  
 5 just decided not to use it. Isn't that reasonable to  
 6 say?  
 7 MR. CONROY: Objection.  
 8 MS. FETOUH: Objection.  
 9 MS. ECKER: Objection.  
 10 A The decision was made not to use the line of credit.  
 11 Q But that's not what you told the judge. What you told  
 12 the judge was you were unable to raise it. Is there  
 13 some sort of stop-payment or stop-borrowing order on  
 14 your line of credit at Wainwright Bank? In other  
 15 words, can you go in there right now, TPL, and borrow  
 16 money on the line of credit, or is it in some way in  
 17 default?  
 18 A I don't know.  
 19 Q You don't know if your own line of credit is in  
 20 default, sir?  
 21 A Correct.  
 22 Q Do you have reason to believe that your line of credit  
 23 is in default?  
 24 A I have no reason to believe.

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1 obtain from the Commonwealth of Massachusetts came  
 2 entirely from the Commonwealth of Massachusetts or  
 3 from some federal agency?  
 4 A I don't know.  
 5 Q Are you familiar with making applications for funds  
 6 from federal agencies?  
 7 A Yes.  
 8 Q Are you familiar with any statutes providing for  
 9 criminal and civil penalties for the filing of  
 10 inaccurate or untrue statements where federal funds  
 11 are being requested?  
 12 A No.  
 13 Q Let's go forward on this paragraph, under two,  
 14 contingency plan for cost overruns. It says: As part  
 15 of the larger Kunelius project, the Trust for Public  
 16 Land has organized a significant private fund-raising  
 17 campaign. This campaign, in conjunction with the Stow  
 18 CPA funds, the sale of the unit and the HDSP funds,  
 19 has sufficient capacity to, if necessary, cover cost  
 20 overruns. Do you see that?  
 21 A I do.  
 22 Q So, at the time of the application, you were not  
 23 relying on multiple sale of units. You were relying  
 24 on one sale. Isn't that correct?

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1 Q So, as the director of the State of Massachusetts TPL,  
 2 is it your testimony today under oath that you do not  
 3 know whether your line of credit is in default or not.  
 4 MR. CONROY: Objection.  
 5 MS. FETOUH: Objection.  
 6 A I think I answered that question.  
 7 Q And the answer is you do not know whether it's in  
 8 default or not.  
 9 A Correct.  
 10 Q Do you know if it's overdrawn or not?  
 11 A I don't.  
 12 Q Do you know if any money is withdrawn on that account?  
 13 A I don't.  
 14 Q Who would?  
 15 MR. CONROY: Objection.  
 16 A Our finance manager.  
 17 Q And is the line of credit that's in Wainwright Bank,  
 18 is that money that is earmarked for the Massachusetts  
 19 branch of TPL?  
 20 A I think it's available for the region.  
 21 Q And so the region would be the New England region?  
 22 A Right.  
 23 Q Do you know who applied for that six million dollar  
 24 line of credit?

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1 A We made reference to just 144. Now, whether in fact,  
 2 by that reference, we intended to capture a sale of  
 3 just 140 -- at that time, it had not been subdivided.  
 4 Whether we were referring to just the single lot or  
 5 the hoped for double lot, I don't know.  
 6 Q Going on, it says: In addition, the Trust for Public  
 7 Land has received confirmation that its six million  
 8 dollar line of credit has been renewed by Wainwright  
 9 Bank and that these funds would be available to cover  
 10 cost overruns subject to TPL's normal due diligence  
 11 and internal review. Do you see that?  
 12 A I do.  
 13 Q Is this the first time you knew that the money could  
 14 be also used, the line of credit could also be used,  
 15 for cost overruns?  
 16 A No, I was aware of the line of credit.  
 17 Q But you were not aware of a fallback position that  
 18 involved the use of borrowing under the line of  
 19 credit?  
 20 A What I remember is that the line of credit was out  
 21 there and that, if the circumstances were right, it  
 22 might make sense to use it.  
 23 Q So, at the time that you told the federal court that  
 24 you could not raise the funds sufficient to purchase

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1 A No.  
 2 Q How would Christopher LaPointe know of this line of  
 3 credit as a project manager?  
 4 MS. FETOUH: Objection.  
 5 MR. CONROY: Objection.  
 6 A He would ask our business manager, finance manager.  
 7 Q He would not ask you, sir?  
 8 MR. CONROY: Objection.  
 9 A I'm not sure what he did in this case. I don't know  
 10 what he would do. He could ask me. He could also ask  
 11 our finance manager.  
 12 Q Is it your testimony today that this is the first time  
 13 you are aware that TPL informed the Commonwealth of  
 14 Massachusetts, under oath, that it had a six million  
 15 dollar line of credit?  
 16 MR. CONROY: Wait a minute. I object.  
 17 MS. FETOUH: Objection.  
 18 Q Do you know of any laws that prohibit the filing of  
 19 inaccurate documents with the state, the Commonwealth  
 20 of Massachusetts, with regard to attempting to obtain  
 21 grants where the applications contain false  
 22 information?  
 23 A No.  
 24 Q Are you aware of whether the money that you sought to

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1 the property -- I'm going to withdraw that question.  
 2 I'm going to read from a document that was filed on  
 3 your behalf called, "Memorandum of Law in Support of  
 4 the Motion to Dismiss of the Defendants, the Trust for  
 5 Public Land, Craig A. MacDonnell and the Town of Stow."  
 6 Down at the bottom of the first page on the  
 7 right-hand side, three lines up, it says: When  
 8 TPL accepted that assignment and exercised the  
 9 right of first refusal, TPL stepped into the  
 10 place of the buyer in that agreement and became  
 11 subject to its terms and conditions. When TPL  
 12 ultimately was unable to raise the money to fund  
 13 the purchase, it was unable to acquire the  
 14 property and forfeited thousands of dollars to  
 15 Kunelius pursuant to the liquidated damage  
 16 clause. Do you see that?  
 17 A I do.  
 18 Q Now, did you read this before it was submitted to the  
 19 court on your behalf?  
 20 A I believe I did.  
 21 Q And you've already testified that you were aware that  
 22 there was a line of credit. Am I correct there?  
 23 A Yes.  
 24 Q But you weren't aware of how much money was in the

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## DEPOSITION OF CRAIG MACDONNELL

MINI-DEP by Kenson

1 line of credit. Am I correct as well?  
 2 A Correct.  
 3 Q And you weren't aware of whether the line of credit  
 4 was in default, is that correct?  
 5 A I don't have a recollection of the status of the line,  
 6 as I sit here today, regarding my awareness then.  
 7 Q Are you aware of TPL being in default on lines of  
 8 credit or other banking obligations?  
 9 A I am not.  
 10 Q In your tenure as director of the Massachusetts state  
 11 office of TPL, are you aware of any circumstance in  
 12 which TPL was in default on a line of credit or any  
 13 other financial obligation to a bank?  
 14 A I am not.  
 15 Q You are aware, are you not, that the president of  
 16 Wainwright Bank was a Board of Advisor member to TPL?  
 17 A I was not aware of that.  
 18 Q Are you aware of any banking obligations in which  
 19 insiders to bank operations have to disclose certain  
 20 applications for loans?  
 21 A Could you state that again?  
 22 Q Well, if you don't understand it, I'll withdraw the  
 23 question.  
 24 A I don't understand it.

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1 Q I want to read from Page 6 of your Memorandum of Law  
 2 in Support of a Motion to Dismiss the Defendants, the  
 3 Trust for Public Land, Craig A. MacDonnell and the  
 4 Town of Stow. Page 6 says: Ultimately -- this is the  
 5 second paragraph, four lines down. Ultimately,  
 6 however, TPL was unable to raise the funds necessary  
 7 to purchase the property by the closing date of  
 8 September 26, 2003. Do you see that?  
 9 A Yes.  
 10 Q Now, I would like you to look back at Exhibit 11 and  
 11 tell me: what is the date of Exhibit 11 on the first  
 12 page?  
 13 A 3-30.  
 14 Q So, that would be March 30, 2003. So, we have April,  
 15 May, June, July, August, September. Six months later,  
 16 you certainly had the -- strike that.  
 17 Is it your testimony today that you elected  
 18 not to borrow the money for the purchase of the  
 19 property from Mrs. Kunelius?  
 20 MR. CONROY: Clarify when you say you.  
 21 MR. McLAUGHLIN: TPL.  
 22 A The decision of how to go forward on this project was  
 23 a function of a lot of different variables, including  
 24 whether or not it was likely that TPL could raise the

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1 money privately via traditional fund-raising and the  
 2 sale of 142 and 144 and the town's contribution.  
 3 Q If that's the case, sir, why does TPL write: As a  
 4 fallback position, if any or all of the above-  
 5 referenced sources of funds are unavailable, TPL  
 6 intends to use capital from the private market?  
 7 The statement in the application to the  
 8 Commonwealth of Massachusetts seems to be  
 9 inconsistent with your last answer because this  
 10 statement says it doesn't matter whether you get  
 11 any of the funds; you're going to borrow in order  
 12 to meet the obligation. Did you read this  
 13 application before it was signed?  
 14 A Exhibit 11?  
 15 Q Yeah.  
 16 A I'm sure I did. Put it this way. I'd like to clarify  
 17 that. I don't have a recollection today of reading  
 18 it. I remember working on it.  
 19 Q I'm going to have you look at Page 351 of Exhibit 11.  
 20 A Yup.  
 21 Q Under Item 63, you're listed as the contact person for  
 22 TPL. Is that correct?  
 23 A Yes.  
 24 Q And also mortgagor. Do you see that?

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1 A Sixty-four.  
 2 MS. FETOUH: Objection.  
 3 Q Sixty-four. And, I'm sorry, on Item 64, it refers to  
 4 Do you see that?

tending to borrow in order to be a  
 upon this application?  
 FETOUH: Objection.  
 CONROY: Objection.  
 of this, number 64, the significance  
 had the opportunity under the  
 land and become an owner of the

the money from the state, from the  
 id TPL have to grant any mortgage? Did  
 at money in any way?  
 ere to take advantage of  
 rtgage.

at the next page, Item 71, Denise  
 he, if you know?

21 A She is an attorney who worked, at the time, for TPL.  
 22 Q Does she work for TPL anymore?  
 23 A No.  
 24 Q Was she an intern of Goodwin, Procter & Hoar?

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1 A I don't know.  
 2 Q You're aware that there are virtually dozens of people  
 3 from Goodwin, Procter & Hoar that have worked as  
 4 interns at TPL, is that correct?  
 5 MS. FETOUH: Objection.  
 6 A There have been several. I wouldn't say dozens.  
 7 Q You wouldn't?  
 8 A No. No, I wouldn't.  
 9 (WHEREUPON, Exhibit No. 12, TPL Web  
 10 site excerpt, marked for identification.)  
 11 Q I'm going to put this -- Exhibit 12. Exhibit 12 is an  
 12 excerpt from your Web site. I think it refers to 40  
 13 associates, 17 partners, something like that. Do you  
 14 see that? And that they've done over 4,000 hours of  
 15 work for TPL since 2001. Do you see that?  
 16 A Yes.  
 17 Q So, there have been dozens of Goodwin, Procter & Hoar  
 18 partners and associates who have worked pro bono and  
 19 some as interns. Isn't that correct?  
 20 A That is correct. They were not all interns.  
 21 Q I understand.  
 22 A You asked me whether or not dozens had been interns  
 23 and so.  
 24 Q I want to point out with as much kindness as possible

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1 that that Michael McLaughlin in that picture most  
 2 certainly is not me. Do you see that?  
 3 A Doesn't look like you.  
 4 MR. CONROY: Nor are you Mike  
 5 McLaughlin.  
 6 MR. McLAUGHLIN: Yes, I know.  
 7 Q So, can I have that back?  
 8 A Yeah.  
 9 Q On Paragraph 71, are you aware of whether Denise  
 10 Pelletier reviewed this document?  
 11 A I am not aware.  
 12 Q Looking at the next line, Dorothy Stuckey, Esquire,  
 13 we've already referenced Dorothy Stuckey. She is  
 14 counsel, correct, to TPL?  
 15 A Stuckey, yes.  
 16 Q Stuckey. Are you aware of whether she had reviewed  
 17 this document?  
 18 A I am not aware.  
 19 Q Would Dorothy Stuckey be aware of whether there was a  
 20 line of credit in the amount of \$6,000,000 that TPL  
 21 had?  
 22 MR. CONROY: Objection.  
 23 MS. FETOUH: Objection.  
 24 A I don't know.

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**DEPOSITION OF CRAIG MACDONNELL****MINIDEP by Kenson**

1 Q Is it likely that counsel would know that?  
 2 MR. CONROY: Objection.  
 3 MS. FETOUH: Objection.  
 4 A I don't know what she knows.  
 5 Q Are you aware of any circumstance in which the line of  
 6 credit was ever used?  
 7 A No, I am not aware of those circumstances.  
 8 Q Are you aware of any time which you were involved, and  
 9 I'm going to, with all due respect, remind you you're  
 10 under oath, that you were involved in the acquisition  
 11 of any property by TPL in which the line of credit was  
 12 used?  
 13 A I am not aware of utilizing the Wainwright line of  
 14 credit on one of my projects.  
 15 Q Are you aware of utilizing any line of credit on one  
 16 of your projects?  
 17 A It is hard to answer your question, because when  
 18 project managers seek approval to borrow money to do  
 19 projects, it's not always made clear to them which --  
 20 where the money comes from. In other words, the  
 21 finance office at TPL generally addresses accessing  
 22 those funds.  
 23 Q Is that finance office in Boston or in California?  
 24 A Here.

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1 Q What other banks does TPL have lines of credit with?  
 2 MR. CONROY: Objection.  
 3 A I only know of one other, and I believe it's Sun  
 4 Trust.  
 5 Q As I understand it at the time you told the court, the  
 6 time the memorandums were filed on behalf of TPL and  
 7 yourself, that TPL was unable to borrow the money. As  
 8 it understand it, the amount of money that would have  
 9 had to have been borrowed -- strike that.  
 10 At the time that TPL filed its memorandum  
 11 with the court indicating that it was unable to  
 12 raise the money, it had available to it a four  
 13 hundred thousand dollar possibility with  
 14 Mrs. Kunelius and a six million dollar  
 15 possibility of borrowing with Wainwright Bank,  
 16 correct?  
 17 MS. FETOUH: Objection.  
 18 MR. CONROY: Objection.  
 19 A Well, as we've talked about with respect to the  
 20 Kunelius potential, that did not seem to be available.  
 21 Q Availing or available?  
 22 A As I think I mentioned earlier, my understanding of  
 23 the mortgage, the potential mortgage, was that were  
 24 TPL to close utilizing it, Mrs. --

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1 Q I understand that. I understand that. What I'm  
 2 trying to say --  
 3 MR. McLAUGHLIN: I don't need an  
 4 explanation for why he didn't use it. My  
 5 question was: does he understand that that was  
 6 available and the six million dollar line of  
 7 credit was available for the possibility of  
 8 borrowing on? That's all I'm asking.  
 9 MR. CONROY: And I think he's entitled  
 10 to answer the question as he sees fit.  
 11 A I'm addressing the availability issue. If you'll let  
 12 me finish, I can complete the thought.  
 13 Q Well, before I do, before I do, the issue -- I don't  
 14 want to mince words. When I say available, I mean  
 15 that your organization had the ability, should it so  
 16 desire, to borrow that money. I am not talking -- I  
 17 don't want to mince words and have you say, well,  
 18 available to us means does it work. The question was:  
 19 did the contract, either the line of credit or the  
 20 purchase and sale agreement, allow you to borrow  
 21 money?  
 22 MR. CONROY: Objection.  
 23 MS. FETOUH: Objection.  
 24 Q That's the question.

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1 MS. ECKER: Objection.  
 2 A The four hundred thousand dollar mortgage required an  
 3 actual mortgage to be imposed on the property which  
 4 would have prevented us from conveying it to the town.  
 5 Q Didn't that also require that of Mosaic Commons as  
 6 well?  
 7 A I don't know.  
 8 Q You don't know that?  
 9 A Well, what I'd like to do is finish my sentence.  
 10 MR. CONROY: Yeah, and I'm going to  
 11 insist that he finish uninterrupted.  
 12 MR. McLAUGHLIN: I thought he had  
 13 finished, but I'm sorry.  
 14 MR. CONROY: Go ahead, Craig.  
 15 A The Kunelius mortgage potential would have required an  
 16 actual mortgage to be imposed on the property itself.  
 17 The existence of that mortgage would have been  
 18 unacceptable to the Town of Stow because they wanted  
 19 to take their 45 acres free of any mortgage. If  
 20 they're going to invest, they don't want to burden the  
 21 property. That led us to conclude that, in your  
 22 words, that mortgage was unavailable.  
 23 (Messrs. Kachajian and Norris enter.)  
 24 Q You make the assumption in your answer, I believe,

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1 that the mortgage was to be entirely on that portion  
 2 of the property that was going to the town. In fact,  
 3 TPL was to retain certain property after the purchase.  
 4 Isn't it in fact true that the mortgage that was to be  
 5 given to Mrs. Kunelius was to be on that portion of  
 6 the property not going to the town?  
 7 MR. CONROY: Objection.  
 8 A I don't know that.  
 9 Q But you have just testified that you did, because  
 10 you've said that the town objected concerning that  
 11 mortgage. I will represent to you that there is not  
 12 one document from the town indicating that objection,  
 13 unless I've missed it. So, if there is such an  
 14 objection, then I would request town counsel to  
 15 provide that to me, where the town says they will not  
 16 allow the deal to be done because of a mortgage on the  
 17 property to be given to the town. Having said that,  
 18 are you --  
 19 MS. ECKER: Can I object to that  
 20 request first?  
 21 MR. McLAUGHLIN: Yes.  
 22 MS. ECKER: I object to the request.  
 23 The town has turned over all documents pursuant  
 24 to the documents requested. Whether that

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1 specific document exists, I am not sure.  
 2 MR. McLAUGHLIN: Okay.  
 3 MS. ECKER: But, in general, we've  
 4 turned over all documents to you, whether it's  
 5 contained in a conversation or otherwise. So, I  
 6 want --  
 7 MR. McLAUGHLIN: I'm not impugning you,  
 8 madam.  
 9 MS. ECKER: I understand, but, no, I'm  
 10 not going to go through the town documents at  
 11 this time and provide you any further documents.  
 12 MR. McLAUGHLIN: Well, at this point,  
 13 I'm going to ask the witness again if the witness  
 14 believes that the town objected to the borrowing  
 15 by the witness' organization because it resulted  
 16 in a mortgage on the portion of the land going to  
 17 the town. Then I will ask you again to see if  
 18 there is such a document, because nothing has  
 19 been produced. I'm just saying --  
 20 MS. ECKER: Well, let me just start  
 21 here. I don't know if nothing has been produced.  
 22 We produced hundreds of documents to you. I  
 23 might your interpretation of the document. I  
 24 have not had the opportunity, nor do I suggest

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1 the witness had the opportunity, to review the  
 2 hundreds of documents, including meeting minutes,  
 3 that have been produced. So, I'm not going to  
 4 agree to produce anything at this time.  
 5 MR. McLAUGHLIN: Okay.  
 6 MS. ECKER: Or agree that I haven't  
 7 produced it.  
 8 MR. McLAUGHLIN: Okay. Let the record  
 9 reflect that counsel has spoken to the witness.  
 10 Q I'm going to again ask you: are you certain that the  
 11 town objected to TPL complying with the terms of the  
 12 purchase and sale agreement and borrowing \$400,000  
 13 from Mrs. Kunelius?  
 14 MS. FETOUH: Objection.  
 15 A I don't believe that was my testimony.  
 16 Q What was your testimony, sir?  
 17 A My testimony, I thought, and --  
 18 MR. CONROY: With all due respect, the  
 19 question is: what is his testimony? That's the  
 20 right question.  
 21 MR. McLAUGHLIN: What did I just say?  
 22 MR. CONROY: What was your testimony?  
 23 And the record will say what his testimony was.  
 24 I'd suggest that he be asked a question now and

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1 he answer it.  
 2 MR. McLAUGHLIN: No, that's not -- but  
 3 I thank you for the instruction. What I am  
 4 saying is I want to know what he said, not what  
 5 he's saying now but what he said, and then I'll  
 6 work from there.  
 7 MR. CONROY: What he said back in time?  
 8 MR. McLAUGHLIN: I want to know what,  
 9 no, what he just said about the town objecting,  
 10 because he's now saying that wasn't his  
 11 testimony. I want to know what he thinks he just  
 12 said about the town objecting.  
 13 MR. CONROY: Well, I object.  
 14 THE WITNESS: Well, I'm happy to  
 15 clarify it.  
 16 Q Okay. Go ahead.  
 17 A Okay. The issue of the mortgage, requiring an actual  
 18 mortgage to be placed on the property, led TPL to  
 19 believe, correctly or incorrectly, that that would  
 20 have been a problem for the town. It's not my  
 21 testimony that I had a conversation with anyone from  
 22 the town about that. It was my -- it is my  
 23 recollection that that presented an obstacle to  
 24 utilizing that portion of the financing.

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1 Q Why would the mortgage have been on the property that  
 2 went to the town rather than the property that went to  
 3 TPL?  
 4 A I'm testifying to my recollection of that issue, and  
 5 I've shared with you what my recollection is of that  
 6 issue.  
 7 Q But I believe you just said that TPL surmised that the  
 8 town wouldn't want -- my question to you is: the land  
 9 that was going to the town was a donation as part of  
 10 the deal with Mosaic Commons. The mortgage with  
 11 Mosaic Commons stayed on the remaining portion of the  
 12 property that was to be owned by Mosaic Commons. What  
 13 made TPL believe that it would not remain on the  
 14 portion to be maintained by TPL and be somehow  
 15 transferred to that land being given to the town?  
 16 MR. CONROY: Objection. Among other  
 17 things, this is not a 30(b)(6) deposition.  
 18 MR. McLAUGHLIN: I understand. I'm  
 19 going to do a 30(b)(6), and he may be the person  
 20 to come back.  
 21 MR. CONROY: I understand you are.  
 22 MR. McLAUGHLIN: But if he can answer  
 23 the question --  
 24 A I think I've exhausted my ability to speak to that

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1 issue.  
 2 Q So, if I can sum up, the town never told you they  
 3 would not accept a mortgage on the property that was  
 4 going back to the town, is that correct?  
 5 MS. ECKER: Objection.  
 6 A We never had a discussion about it.  
 7 Q So, it was your, TPL's, assumption that they might  
 8 object and, therefore, it would not work?  
 9 A Correct.  
 10 Q And that TPL never anticipated that the mortgage for  
 11 the \$400,000 would be on the portion of the property  
 12 that TPL was to acquire.  
 13 MS. FETOUH: Objection.  
 14 A That's where I don't have a recollection.  
 15 Q But you realize, do you not, that TPL was the borrower  
 16 and that the remaining portion of the land was going,  
 17 as part of the sale, to the town? So, how is it  
 18 possible that TPL could ever have anticipated that  
 19 they acquire the money, they borrow the money -- they  
 20 acquire the property, they borrow the money from  
 21 Mrs. Kunelius, and somehow transfer the liability  
 22 for that money to the town?  
 23 MR. CONROY: Craig, don't answer.  
 24 Q And somehow transfer the liability for that money to

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1 the town rather than TPL, because TPL's the borrower.  
 2 MR. CONROY: Objection.  
 3 MS. FETOUH: Objection.  
 4 (Mr. Kachajian exits the room.)  
 5 A With all due respect, I don't think I understand the  
 6 question.  
 7 Q Okay. Who was going to borrow the money, the  
 8 \$400,000, under the purchase and sale agreement?  
 9 A Do you mean under the Kunelius mortgage option?  
 10 Q Yes, under the terms of the purchase and sale  
 11 agreement, who was to borrow \$400,000 from  
 12 Mrs. Kunelius?  
 13 A The ultimate purchaser.  
 14 Q Well, it says -- it doesn't say the ultimate  
 15 purchaser, does it? It says Mosaic Commons. Isn't  
 16 that what it says?  
 17 MS. FETOUH: Objection.  
 18 A Why don't we get out the contract.  
 19 MR. CONROY: We have the document, so.  
 20 THE WITNESS: I'm going to take a  
 21 break.  
 22 (Recess, 2:20 P.M.)  
 23 (After recess, 2:31 P.M.)  
 24 (Messrs. Kachajian and Norris not present)

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1 (WHEREUPON, Exhibit No. 13, MacDonnell  
 2 letter to Kachajian, dated September 9, 2003,  
 3 marked for identification.)  
 4 By MR. McLAUGHLIN:  
 5 Q Before you is Exhibit 13, which is a September 9,  
 6 2003, letter from you to Peter Kachajian. Do you  
 7 recognize this?  
 8 A Yes.  
 9 Q And that's your signature at the end?  
 10 A Yes.  
 11 Q Looking at the first page, there is a paragraph  
 12 beginning with First, which reads: First, there is a  
 13 significant fund-raising gap. What was the  
 14 significant fund-raising gap that you were referring  
 15 to?  
 16 A The gap between the number of dollars that we believed  
 17 was going to come in from the Town of Stow investment  
 18 and the purchase price.  
 19 Q And what investment are you talking about by the Town  
 20 of Stow?  
 21 A The three hundred thousand dollar open space  
 22 investment and the one hundred thousand dollar  
 23 affordable housing.  
 24 Q And so did you become aware on or about September 9th

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**DEPOSITION OF CRAIG MACDONNELL****MINIDEP by Kenson**

1 of 2003 that the Town of Stow was not going to provide  
 2 the three hundred thousand and the one hundred  
 3 thousand?  
 4 A No. No.  
 5 Q So, the fund-raising gap that you're referring to does  
 6 not include the Stow funds, correct?  
 7 A Correct.  
 8 Q And so what you were referring to -- well, let's go  
 9 on. Not only has the economy been hostile to  
 10 philanthropy, in general, we have experienced a  
 11 catastrophic failure in the rejection of the 350,000  
 12 Department of Housing and Community Development grant.  
 13 Do you see that?  
 14 A Yes.  
 15 Q Now, why was that catastrophic?  
 16 A Because we needed it.  
 17 Q But if you look at Exhibit 11, Exhibit 11 says: As a  
 18 fallback plan, if any or all of the above-referenced  
 19 sources are unavailable, TPL intends to utilize  
 20 capital from the private market.  
 21 Now, Exhibit 11 suggests that nothing would  
 22 be catastrophic because you had the fallback plan  
 23 which involved a line of credit. What made the  
 24 loss of the 350 catastrophic?

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1 MR. CONROY: Objection.  
 2 MS. FETOUH: Objection.  
 3 A When TPL analyzes these projects, it identifies  
 4 sources of takeout money, dollars that will be spent  
 5 to acquire the property interests that are necessary  
 6 to make the conservation project complete. Because  
 7 TPL is not a landholding organization -- in other  
 8 words, we don't buy land to hold for conservation. We  
 9 occasionally will buy it and sell it, if necessary, to  
 10 complete a conservation project -- we always look for  
 11 the ultimate takeout, that is, the source of funds  
 12 that will purchase the property interest that I just  
 13 mentioned.  
 14 So, in determining whether or not a project  
 15 can be completed, TPL engages in an analysis of  
 16 whether the ultimate takeout funds will be  
 17 available. In this project, those funds appeared  
 18 not to be available, ultimately. The fund-  
 19 raising we had imagined did not materialize, the  
 20 DHCD grant did not come through, and it did not  
 21 seem as if it was possible to raise those dollars  
 22 for the ultimate conclusion of the project, not  
 23 that TPL could not borrow the money to make -- to  
 24 replicate those dollars but that any borrowing

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1 that TPL engages in is designed only as a  
 2 stopgap, an interim stopgap, subject to our own  
 3 due diligence that would satisfy us that  
 4 ultimately that loan could be repaid from capital  
 5 takeout.  
 6 Q At the time that you accepted the assignment, I  
 7 believe your testimony was that you had every  
 8 expectation that everything would work out.  
 9 A We did.  
 10 Q Is it reasonable -- is it your position that  
 11 Mrs. Kunelius, in signing the purchase and sale  
 12 agreement with Mosaic Commons, should have  
 13 anticipated, one, that TPL was coming onboard  
 14 and, two, that eventually, notwithstanding their  
 15 alleged best intentions, they would fail?  
 16 MS. FETOUH: Objection.  
 17 Q Is that something that you think Mrs. Kunelius should  
 18 have anticipated?  
 19 MR. CONROY: Objection.  
 20 MS. FETOUH: Objection.  
 21 A Well, I don't know if Mrs. Kunelius should have  
 22 anticipated that, but an attorney reading the contract  
 23 and knowing Chapter 61 would know that the assignee  
 24 steps into the shoes of a contract negotiated by him

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1 or her and that that contract imagined Mrs. Kunelius  
 2 walking away with liquidated damages but not the  
 3 purchase of her property.  
 4 Q It's your testimony that you did not anticipate,  
 5 ultimately, that this matter would fail, and, in fact,  
 6 your testimony is that you had every expectation that  
 7 it would go forward. Am I right on that?  
 8 A As with every TPL project we work on. We don't get  
 9 into these projects just for the heck of them. We do  
 10 them to achieve conservation. So, absolutely, yes,  
 11 completely our intention.  
 12 Q And, therefore, you were not expecting that  
 13 Mrs. Kunelius should have anticipated that TPL  
 14 would not have been able to raise money for the  
 15 purchase. Is that reasonable to say? I don't  
 16 care about lawyers.  
 17 A No.  
 18 Q The question is: if you didn't anticipate it, is it  
 19 reasonable for you to expect that Mrs. Kunelius should  
 20 have anticipated that you would have failed?  
 21 MR. CONROY: Objection.  
 22 MS. FETOUH: Objection.  
 23 MS. ECKER: Objection.  
 24 Q TPL would have failed.

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1 A I don't know what it is reasonable for Mrs. Kunelius  
 2 to have expected on her own, but anyone reading the  
 3 contract would know that there are two ways forward  
 4 under that contract. One is with the purchase.  
 5 Another is via an in-completed transaction.  
 6 Q But you told the Commonwealth of Massachusetts there  
 7 was a fallback plan. I still don't understand what  
 8 was intended by TPL in telling the Commonwealth that,  
 9 even if any or all of the other sources were  
 10 unavailable; that TPL intends to utilize capital. If  
 11 that's the fallback plan, what was the purpose of  
 12 telling the Commonwealth that?  
 13 MR. CONROY: Objection.  
 14 MS. FETOUH: Objection.  
 15 A What that means is that TPL could have borrowed to  
 16 conclude this transaction if it made sense, otherwise,  
 17 from a due diligence point of view. What I'm trying  
 18 to tell you about is this due diligence piece that  
 19 imagines in every TPL project that if borrowing is  
 20 necessary, the borrowing is replaced by conservation  
 21 takeout dollars that materialize somewhere. In the  
 22 absence of dollars on the horizon, fund-raised, sale  
 23 of 142 or 144, it would not be prudent for TPL to  
 24 borrow the money to complete the transaction.

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1 Q How much money you had to borrow?  
 2 MS. FETOUH: Objection.  
 3 A It depends how much money would have been on the table  
 4 to begin with.  
 5 Q Well, at the time, the application says none of the  
 6 sources are critical because you can borrow. That's  
 7 essentially what it says. My question is, at a  
 8 minimum, one source was available. That's the four  
 9 hundred thousand from the city, from the town, is that  
 10 correct?  
 11 MS. FETOUH: Objection.  
 12 MR. CONROY: Objection.  
 13 A Well, three hundred is available at the closing if the  
 14 town gets their land. The one hundred wouldn't be  
 15 available until the ultimate renovation and resale of  
 16 the two units, of 142 and 144. It became apparent in  
 17 the middle of this project that that subdivision  
 18 process was fraught with problems, that we can talk  
 19 about, but towards the end of the project, the ability  
 20 of TPL to subdivide that property was highly  
 21 problematic, and it did not appear as if that  
 22 subdivision was possible.  
 23 Q In fact, you were told prior to the time that you  
 24 acquired the property that the subdivision was

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**DEPOSITION OF CRAIG MACDONNELL**

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1 unlikely. Isn't that true?  
 2 A No, in fact, we were told it was very likely.  
 3 Q Isn't it in fact true that, before you accepted the  
 4 assignment, you had already been told that a  
 5 subdivision was not likely at all?  
 6 A That's not my recollection at all.  
 7 Q My question remains: how much money did you think you  
 8 had to borrow at the time that you decided not to go  
 9 forward in making the purchase?  
 10 MR. CONROY: Objection.  
 11 A Well, as I testified earlier, there is no point in  
 12 time. It's a gradual awareness that this project is  
 13 getting highly complicated and highly problematic from  
 14 a whole lot of different perspectives.  
 15 Q Did the Mosaic Commons deal require a subdivision?  
 16 MS. FETOUH: Objection.  
 17 MR. McLAUGHLIN: I'll strike that.  
 18 Q Did the purchase and sale agreement with Mosaic  
 19 Commons include a subdivision?  
 20 MR. CONROY: Objection. It speaks for  
 21 itself.  
 22 A I don't remember.  
 23 Q Isn't it in fact true that the subdivision issue was  
 24 not part of the Mosaic Commons contract, but it was a

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1 part of your requirement after you accepted the  
 2 assignment, that you wanted a subdivision of the  
 3 property in a particular way?  
 4 MR. CONROY: Objection.  
 5 A Well, I don't know what the Mosaic provision  
 6 contained. I just don't have that contract in front  
 7 of me, so I can't speak to it. My understanding is  
 8 that's it a 40B and that that short of greases the  
 9 skids.  
 10 Q Your counsel has the contract in front of him. Why  
 11 don't you take a look at it, and I'll look at the one  
 12 I have.  
 13 A I have it in front of me.  
 14 Q Okay. I'm going to move off that subject. I'm going  
 15 to ask you to look at Paragraph 30.  
 16 A Yes.  
 17 Q Second paragraph of Paragraph 30: Security for the  
 18 four hundred thousand promissory note afore-described  
 19 shall be in the form of a mortgage on the 8.57 acre  
 20 parcel. Do you see that?  
 21 A I do.  
 22 Q Is it fair to say that you were wrong in making the  
 23 assumption that the mortgage for the \$400,000 was  
 24 going to be on that portion of the property that was

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1 being given to the town?  
 2 A What I don't know is whether the configuration of the  
 3 8.57 acre parcel is the same configuration that the  
 4 two, 142 and 144, parcels were located on.  
 5 Q Sir, did you just make up, today, the argument that  
 6 the Town of Stow would object to the inclusion of a  
 7 mortgage on the parcel of land that was to be donated  
 8 to the town?  
 9 MS. FETOUH: Objection.  
 10 MR. CONROY: Objection.  
 11 MS. ECKER: Objection.  
 12 Q Did you make that up today?  
 13 MS. FETOUH: Objection.  
 14 MS. ECKER: Objection.  
 15 MR. CONROY: Objection. And this is  
 16 inappropriate sort of questioning,  
 17 Mr. McLaughlin.  
 18 MR. McLAUGHLIN: I don't think so.  
 19 Your objection is noted.  
 20 Q Let me ask you again, sir.  
 21 A I will happily say I did not make that up today.  
 22 Q And can you tell me who raised that issue with you?  
 23 A What issue?  
 24 Q From TPL, as to whether or not the four hundred

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1 thousand dollar mortgage was going to be put on the  
 2 land that was being given to the town?  
 3 MS. FETOUH: Objection.  
 4 A That was my own notion.  
 5 Q Now, you have, do you not, substantial tax expertise?  
 6 MS. FETOUH: Objection.  
 7 MR. CONROY: Objection.  
 8 A No.  
 9 Q Do you recall writing an extensive letter concerning  
 10 the tax benefits that Mrs. Kunelius would gain if she  
 11 accepted a four hundred thousand dollar reduction in  
 12 the purchase price?  
 13 A I can't remember whether the reduction was four  
 14 hundred, but I do remember writing a letter with  
 15 respect to the value of a bargain sale.  
 16 Q Do you recall that a significant component of your  
 17 letter dealt with the donation of land by  
 18 Mrs. Kunelius and the tax benefits to be derived  
 19 from that donation of land to the Town of Stow?  
 20 MS. FETOUH: Objection.  
 21 A I don't think it related to a donation. I think it  
 22 was with respect to a theoretical below-market sale.  
 23 Q Do you recall that a component of the sale involved a  
 24 donation of a substantial portion of the property to

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1 the Town of Hull for a tax consideration on her part?  
 2 MR. CONROY: Objection.  
 3 MS. FETOUH: Objection.  
 4 MS. ECKER: Objection.  
 5 A That's not my recollection.  
 6 Q So, how was the remaining land going to be given to  
 7 the Town of Stow? The portion that was being donated  
 8 to the Town of Stow, how was that going to work under  
 9 the terms of the Mosaic Commons deal?  
 10 MS. FETOUH: Objection.  
 11 MR. CONROY: Objection.  
 12 A You're asking me to essentially read this contract and  
 13 tell you how the land pieces were to be -- I'm sorry.  
 14 Q Well, earlier you testified that you were familiar  
 15 under the provision of Chapter 61 with what provisions  
 16 of a purchase and sale agreement would be applicable  
 17 and what wouldn't. So, I have perhaps mistakenly  
 18 assumed -- I have assumed that you have read the  
 19 purchase and sale agreement, because you've drawn  
 20 conclusions as to what portions of the purchase and  
 21 sale agreement are applicable to TPL and which are  
 22 not.  
 23 So, let me start with a basic question.  
 24 Have you ever read in its entirety the purchase

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1 and sale agreement?  
 2 MS. FETOUH: Objection.  
 3 A Yes.  
 4 Q Are you the person at TPL that came to the conclusion  
 5 that you could rely on the liquidated damage clause  
 6 provision?  
 7 MR. CONROY: Objection.  
 8 MS. FETOUH: Objection.  
 9 A There were a number of people at TPL who reached that  
 10 conclusion.  
 11 Q And who besides you reached that conclusion?  
 12 MR. CONROY: Before you answer the  
 13 question, I want to consider whether it calls for  
 14 an attorney-client privilege, raises an attorney-  
 15 client privilege issue.  
 16 Q Other than attorneys, was there anybody else?  
 17 MR. McLAUGHLIN: Does that do it for  
 18 you?  
 19 MR. CONROY: Well, why don't you  
 20 rephrase it, please.  
 21 Q Other than TPL's counsel, who reached the conclusion  
 22 that the liquidated damage clause would apply and that  
 23 should you not move forward in the purchase, Mrs.  
 24 Kunelius would be left with the earnest money?

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**DEPOSITION OF CRAIG MACDONNELL**

MINI-DEP by Kenson

1 MR. CONROY: Objection.  
 2 MS. FETOUH: Objection.  
 3 A I can testify that I reached that conclusion, but I  
 4 can't say who else in their own minds reached that  
 5 conclusion.  
 6 Q Okay. Let's go back to Paragraph 30, and I want to,  
 7 again, ask you since I didn't understand your past  
 8 answer.  
 9 Look at Paragraph 30, the third paragraph of  
 10 Paragraph 30: Notwithstanding the foregoing,  
 11 buyer shall only encumber the 8.57 acre parcel  
 12 expected to be developed -- parentheses --  
 13 consisting of .93 acre parcel and 7.64 acre horse  
 14 farm parcel. Do you see that?  
 15 A Yes.  
 16 Q Again, I'm going to ask you what made you consider  
 17 that the security for the four hundred thousand dollar  
 18 loan from Mrs. Kunelius to TPL would be anything but  
 19 the parcel described for security in Paragraph 30?  
 20 A And as I sit here today, I don't know what caused me  
 21 to reach that conclusion.  
 22 Q In fact, isn't it fair to say that it's entirely  
 23 possible that your conclusion was wrong?  
 24 MS. FETOUH: Objection.

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1 A I don't know if that is a fair thing to say. What I  
 2 started to talk about was the configuration of the  
 3 8.57 acre parcel. One of the things TPL was doing was  
 4 considering revising the boundary between the town  
 5 parcel and the developed parcels, and the reason that  
 6 we imagined doing that was to facilitate the  
 7 redevelopment, or the reconfiguration, of 142 and 144  
 8 so that they could be sold. There were a number of  
 9 provisions in the subdivision law that required us --  
 10 I think there were shape variances and various things  
 11 that required us to redraw the boundary of the line  
 12 between the town parcels and the developed parcels. I  
 13 don't know, as I sit here today, whether or not that  
 14 followed the same line.  
 15 Q But where in the purchase and sale agreement or in the  
 16 assignment does it allow TPL to alter such a basic  
 17 term of the purchase and sale agreement involving the  
 18 very essence of the amount that is to be paid and how  
 19 it's to be paid? In other words, does TPL, simply as  
 20 an assignee, have the right to say, "I don't like this  
 21 term as defined in Paragraph 30, and, therefore, we're  
 22 going to do something else"? Is that what TPL  
 23 believes is their right under the assignment?  
 24 MR. CONROY: Objection.

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1 MS. FETOUH: Objection.  
 2 A I don't know what you're asking.  
 3 Q You do not know what I'm asking? Is it your testimony  
 4 that TPL could unilaterally change the terms and  
 5 provisions of Paragraph 30 and not have to comply with  
 6 Paragraph 30?  
 7 A That's not my testimony.  
 8 Q Is it your testimony that you agreed to comply with  
 9 Paragraph 30?  
 10 MS. FETOUH: Objection.  
 11 MR. CONROY: Objection.  
 12 A We stepped into the shoes of the contract.  
 13 Q But the contract does not say that there will be a  
 14 redefining of the 8.57 parcel. It doesn't say that  
 15 anywhere, does it?  
 16 A This discussion is in the context of trying to decide  
 17 whether or not the four hundred thousand dollar  
 18 mortgage was available or usable, correct?  
 19 Q Well, certainly, I think you're aware that it was  
 20 available. Mrs. Kunelius was willing to lend it. The  
 21 question becomes whether TPL believed it could  
 22 unilaterally say, "We're not going to do it unless we  
 23 get a subdivision in a manner that we deem  
 24 appropriate. Otherwise, there is no availability."

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1 Essentially, that's what you're saying, and I'm  
 2 saying, where in the contract does that allow --  
 3 A I think you've misunderstood me.  
 4 MS. FETOUH: Objection.  
 5 MS. ECKER: Objection.  
 6 MR. CONROY: Objection.  
 7 A With respect to the subdivision, the subdivision issue  
 8 relates to the question of how TPL would create value  
 9 and bring dollars to the table. What became apparent  
 10 is that that subdivision wasn't possible.  
 11 Q But your argument, I think, sir, is that you stepped  
 12 into the shoes of the buyer. The shoes of the buyer  
 13 allowed for what was contained in Paragraph 30, but  
 14 you didn't like what was contained in Paragraph 30, so  
 15 TPL changed those terms by seeking to get variances,  
 16 did you not?  
 17 MS. FETOUH: Objection.  
 18 MR. CONROY: Objection.  
 19 MS. ECKER: Objection.  
 20 A With all due respect, it's a complete non sequitur.  
 21 What I'm talking about is how TPL brings money to the  
 22 table, not whether or not this contract imagines or  
 23 doesn't imagine us doing that.  
 24 Q Well, do you agree that you stepped into the shoes of

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1 the buyer?  
 2 MS. FETOUH: Objection.  
 3 A Yes.  
 4 Q And do you agree that some terms do not apply to TPL?  
 5 A As a matter of Chapter 61 law, or lore, the assignee  
 6 is naturally required to comply with some but not all  
 7 terms.  
 8 Q Does the assignee have to comply with the purchase  
 9 price?  
 10 MR. CONROY: Objection.  
 11 MS. FETOUH: Objection.  
 12 A If the assignee goes forward and purchases the  
 13 property, I would say yes.  
 14 Q I'm going to put before you another document.  
 15 (WHEREUPON, Exhibit No. 14, Conditions  
 16 for right of first refusal, marked for  
 17 identification.)  
 18 Q The document that I am putting before you appears to  
 19 be an iteration of what you've already seen as  
 20 Exhibit 7. It was received from the Town of  
 21 Stow. It has DRAFT on the top. It discusses the  
 22 conditions for transfer of the town's right of  
 23 first refusal on the Kunelius property. The bold  
 24 language appears to be TPL's answers to

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1 questions.  
 2 I had asked you earlier if you remembered  
 3 Exhibit 7, and you said you were not sure or, no,  
 4 you didn't. I'm asking you now. Do you remember  
 5 what is now Exhibit 14?  
 6 MR. CONROY: Objection.  
 7 A It looks somewhat familiar.  
 8 Q And isn't it in fact true that all of the TPL  
 9 responses are after each question raised by the town,  
 10 and those responses are in bold print?  
 11 A It appears that way.  
 12 Q And are you the author of the bold print responses?  
 13 A I believe so.  
 14 Q And you would agree with me that this correspondence,  
 15 or this document, had to be drafted prior to the  
 16 assignment?  
 17 A That would make sense.  
 18 Q So, let's look at Item No. 2, which is referring to  
 19 the town's request that the town be held harmless if  
 20 TPL backs out of the deal before closing, in other  
 21 words, and I'm quoting, in order words, that TPL will  
 22 defend the town against any suit resulting from the  
 23 failure of the property purchase to be completed.  
 24 Alternatively, TPL posts a bond that guarantees their

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## DEPOSITION OF CRAIG MACDONNELL

MINI DEP by Kenson

1 performance. Then there's a response.  
 2 TPL: The appropriate way for risks  
 3 presented by this project to be managed are for  
 4 the common law of contract to apply. This law  
 5 will require TPL, not the town, to be obligated  
 6 to perform if the right of first refusal is  
 7 assigned. The town's legal responsibility ends  
 8 with the assignment. If we are offered the  
 9 opportunity to accept the assignment and we  
 10 decide to go forward, the law will require us to  
 11 meet the essential requirements of the contract  
 12 or suffer the consequences of default.  
 13 Now, at this point, you were referring, were  
 14 you not, to the fact that if you defaulted, then  
 15 the only money that was at risk to you was the  
 16 20,000 or \$22,000 that had been paid as earnest  
 17 money to Mrs. Kunelius, is that correct?  
 18 MR. CONROY: Objection.  
 19 MS. FETOUH: Objection.  
 20 A We believed that the liquidated damages provision  
 21 would apply.  
 22 Q Now, I want you to go to the last page, Item No. 7.  
 23 The town raises the following issue: Because of the  
 24 difference in type of buyer, any parts of the P&S that

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1 TPL believes don't apply should be addressed. A,  
 2 Paragraph 8, Time Performance, references a 12-month  
 3 extension if 40B approval process is proceeding  
 4 forward. B, Paragraph 30, Purchase Price Financing,  
 5 references a construction loan of 80 percent of the  
 6 construction costs. C, Paragraph 30, Purchase Price  
 7 Financing, references all purchase agreements of the  
 8 Co-housing project should be assigned to the seller as  
 9 further security. D, Paragraph 30, buyer shall only  
 10 encumber the 8.57 parcel. E, Paragraph 32, buyer and  
 11 seller agree to cooperate on a 40B submission. F,  
 12 Paragraph 35, upon receipt of all permits for the  
 13 development of the 8.57 acre parcel, seller will  
 14 transfer the right of the 42.1 acre parcel to the  
 15 town.  
 16 Now, those appear, is it fair to say that  
 17 those appear, to be the issues that the town was  
 18 identifying that needed to be considered in  
 19 reference to the difference in the buyer, in the  
 20 type of buyer? Is that how you understood that  
 21 question?  
 22 A I understood the question to be just a straight-up  
 23 question to TPL, whether or not A through F apply.  
 24 Q Look at your response. TPL: Because the decided

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1 cases under Chapter 61 do not explicitly resolve all  
 2 of the potential issues that arise when a municipality  
 3 assigns its right of first refusal to a non-profit  
 4 conservation organization, including which of the  
 5 terms of the underlying contract should obligate the  
 6 assignee, it would be prudent for TPL and Marilyn  
 7 Kunelius' attorney to enter into good-faith dialogue  
 8 to determine which terms are relevant and which are  
 9 truly inapplicable. Do you see that?  
 10 A Yes.  
 11 Q So, you knew prior to accepting that that, in fact,  
 12 Chapter 61 did not identify with any certainty at all,  
 13 nor did the cases applying to Chapter 61 explicitly  
 14 resolve, what terms were applicable to whom.  
 15 MS. FETOUH: Objection.  
 16 MR. CONROY: Objection.  
 17 MS. ECKER: Objection.  
 18 A That's not true.  
 19 Q Well, I believe earlier you testified that -- I think  
 20 you said the cases -- I don't remember. You said that  
 21 you believed that, given the case law under Chapter  
 22 61, you could rely on the liquidated damage clause  
 23 provision. Yet, in this correspondence, you say,  
 24 because the decided cases under Chapter 61 do not

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1 explicitly resolve all the potential issues that  
 2 arise, the parties essentially have to get together to  
 3 decide what truly does apply and what doesn't.  
 4 So, in your mind, is it fair to say that you  
 5 understood that the parties, i.e., yourself and  
 6 the town and Mrs. Kunelius, did not have an  
 7 understanding as to what terms specifically  
 8 applied and what did not and that's why you  
 9 suggested getting together with them?  
 10 MR. CONROY: Objection.  
 11 MS. FETOUH: Objection.  
 12 MS. ECKER: Objection.  
 13 A Okay. Well, there's a lot of pieces to that question.  
 14 I guess what I'd start by saying is that what TPL said  
 15 there was that the cases don't resolve all of the  
 16 issues but that, together with the advice of counsel,  
 17 it was clear to us that some provisions would apply.  
 18 Q What provisions? What provisions would apply?  
 19 MS. FETOUH: Objection.  
 20 Q The P&S, you have the P&S right in front of you.  
 21 Let's go through them and decide, have you tell me  
 22 right now, what provisions would apply and what  
 23 provisions would not.  
 24 MS. FETOUH: Objection. And I'll just

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1 note the concern that this will infringe on  
 2 communications with counsel, as the witness has  
 3 identified, and just instruct the witness to  
 4 limit his answer to anything that does not  
 5 involve communications with counsel.  
 6 A Much of what I would say would refer to communications  
 7 with counsel.  
 8 MR. McLAUGHLIN: You want to go this  
 9 way?  
 10 MS. FETOUH: Well, I think I need some  
 11 time to talk to the witness about what those  
 12 communications are and the extent to which they  
 13 were shared with others.  
 14 MR. McLAUGHLIN: Okay. If you want to  
 15 go this way, we can go over to the court right  
 16 now. If your argument is, if I understand this,  
 17 that he's not going to testify as to what  
 18 provisions apply and don't apply because he only  
 19 heard it from his counsel, if that's what you're  
 20 actually saying, then I am prepared to go over to  
 21 see the judge right now if in fact that's what  
 22 you're saying. Maybe you're not.  
 23 MS. FETOUH: I think what I said is I  
 24 need to speak to the witness about this.

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1 MR. McLAUGHLIN: Well, wait a minute.  
 2 The position taken by TPL, the position taken by  
 3 TPL is that some provisions apply and some do  
 4 not. It is a quintessential component of the  
 5 case as to what provisions do and do not apply.  
 6 This man is the director of Massachusetts and has  
 7 been the decision-maker with regard to a large  
 8 percentage of what's before the court right now.  
 9 I have every right for him -- since he has  
 10 testified he is aware that, under the provisions  
 11 of Chapter 61, certain provisions do and do not  
 12 apply, I certainly have the right to say, fine,  
 13 here's the P&S. Tell me what applies and what  
 14 doesn't. And if he says, no, I'm sorry, I  
 15 learned that from my counsel, I'm not asking what  
 16 counsel told him. I'm asking what is his  
 17 understanding. That's simple, what his  
 18 understanding is. I'm not asking what his  
 19 counsel told him.  
 20 MS. FETOUH: And it may be that he can  
 21 answer those questions, but I need an opportunity  
 22 to speak with my witness first. If I can have  
 23 that for a few minutes, we'll be right back.  
 24 MR. McLAUGHLIN: Okay.

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## DEPOSITION OF CRAIG MACDONNELL

1 MR. CONROY: And I would add to that,  
2 Mr. McLaughlin, that you do have a 30(b)(6)  
3 deposition coming, and this is not the  
4 appropriate role for this deposition. Let me  
5 finish, please. You're here, as I understand it,  
6 to question Craig MacDonnell about Craig  
7 MacDonnell's memories, things he saw, touched,  
8 smelled, heard, whatever. You'll have another  
9 opportunity to depose the Trust for Public Land  
10 as to what their position is.

11 MR. McLAUGHLIN: That is true.

12 MR. CONROY: And let me suggest that  
13 that be deferred to that deposition.

14 MR. McLAUGHLIN: I think I should have  
15 the right, since he's already testified what he  
16 knows under Chapter 61, to ask him the questions  
17 of which one applies. You can talk to him.  
18 You're talking to him in his role as an employee  
19 of TPL.

20 MS. FETOUH: That's correct.

21 MR. McLAUGHLIN: Okay. Just for the  
22 record, I want to note that the responses in this  
23 case have been indistinguishable as to who is  
24 saying what since they've been jointly filed.

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1 So, each response is from Craig MacDonnell, and  
2 statements regarding these types of questions  
3 have also been defended by Craig MacDonnell.  
4 That's why we have a joint motion to dismiss  
5 statements by Craig MacDonnell that say there are  
6 certain provisions that apply and there are  
7 certain provisions that do. It's in your  
8 responses.

9 So, if it was only in TPL's, I would say  
10 maybe you're right. That's not what you guys  
11 elected to do, but if you want to talk to him,  
12 that's fine. We can take a break.

13 (Recess, 3:10 P.M.)

14 (After recess, 3:17 P.M.)

15 (All parties present)

16 MS. FETOUH: I've had an opportunity to  
17 speak with Mr. MacDonnell. We'll allow him to  
18 answer your question to the extent of his  
19 understanding of the answer to your questions in  
20 his individual capacity, not speaking for TPL as  
21 an institution.

22 MR. McLAUGHLIN: Okay. Thank you.

23 MR. KACHAJIAN: Is this regarding the  
24 purchase and sale?

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1 MR. McLAUGHLIN: Yes. You probably  
2 ought to go.

3 (Mr. Kachajian exits the room.)

4 MR. CONROY: And let me make my little  
5 piece, too, if I may. I have objected  
6 previously, and now again, to the mixing of what  
7 I think is appropriate 30(b)(6) versus individual  
8 deposition and also to the notion of querying  
9 Mr. MacDonnell as a legal expert. With those  
10 objections stated and reserved, I have no grounds  
11 to instruct him not to answer, other than to be  
12 careful that he doesn't reveal any attorney-  
13 client confidences.

14 By MR. McLAUGHLIN:

15 Q Okay. Before we go into the purchase and sale  
16 agreement, I want to go back to some of your prior  
17 testimony. Do you remember we talked about the fact  
18 that you didn't know that variances were not going to  
19 be granted until well after the acquisition of the  
20 assignment?

21 A My memory was that I had reason to believe that the  
22 variance would be granted.

23 (WHEREUPON, Exhibit No. 15, Sommerlad  
24 email to Kennedy, marked for identification.)

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1 Q I have put before you what has been marked as Exhibit  
2 15 and ask you if you recognize this document.

3 A I can describe it. I don't recall seeing it before.

4 Q Well, who is Ruth Kennedy, do you know?

5 A She's a Stow resident. I believe she's on the  
6 Planning Board.

7 Q Who is Karen Sommerlad?

8 A She lives on Red Acre Road.

9 Q And Exhibit 15 is a letter from Karen Sommerlad to R.  
10 Kennedy, Landvest. Subject, Planning Board. Question  
11 re Kunelius property. Importance, high. Ruth, I  
12 apologize for bothering you at work. I'm writing on  
13 behalf of Friends of Red Acre and Craig MacDonnell.

14 Was Karen Sommerlad writing on your behalf  
15 with regard to questions relating to variances  
16 and special permits and so forth?

17 A Well, I don't know. I remember having some  
18 conversations with a number of the Red Acre Road  
19 people about subdivision.

20 Q Does this remind you or refresh your memory concerning  
21 the fact that you were subsequently told that  
22 subdivision and special permits were not going to be  
23 granted in February of 2003?

24 MS. FETOUH: Objection.

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1 A No.

2 Q Looking at the second paragraph, it reads: The  
3 question is, if we need a zoning variance for lot  
4 frontage and possibly other dimensional variances, can  
5 we submit an approval-not-required, ANR, for the  
6 submission and is the appropriate sequencing of events  
7 to get variances and then submit the ANR? Is it  
8 possible to submit an ANR and have it approved subject  
9 to receiving the variances? Is an ANR in this  
10 situation even possible?

11 Do you recall what the answer to those  
12 questions were?

13 A I remember having questions about how to go forward on  
14 the subdivision, and I believe we set up a meeting  
15 with a representative of the planning office to cut  
16 through the ambiguity in which we met with Karen  
17 Kelleher who is an employee of the town.

18 Q Let's go to this one.

19 (WHEREUPON, Exhibit No. 16, Jacobs  
20 email to Sommerlad and Kennedy, dated February 6,  
21 2003, marked for identification.)

22 Q Before you is what has been marked as Exhibit 16, and  
23 we're looking at the first page of that exhibit.

24 A Uh-huh.

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1 Q This appears to be from Donna Jacobs to Karen  
2 Sommerlad and Ruth Kennedy, copied to you. Do you see  
3 that?

4 A Yes.

5 Q The second paragraph says: I do not clearly  
6 understand your objective. However, I can add some  
7 additional statements for your consideration. The  
8 caretaker's cottage is a pre-existing, non-conforming  
9 structure and use. As such, any extension, change in  
10 use or alteration addition is subject to a special  
11 permit from the ZBA. I am uncertain of the specifics  
12 of the Kunelius property as I do not have a map I can  
13 view at this time, but it is likely to be a pre-  
14 existing, non-conforming lot because almost 90 percent  
15 of the lots in Stow fall into that category. The  
16 Planning Board cannot endorse an ANR plan that will  
17 increase the degree of non-conformity of a pre-  
18 existing non-conforming lot. Because the purpose of  
19 the subdivision approval is to create lots with  
20 adequate accesses, frontage and lot area in compliance  
21 with the zoning bylaw, the board can't grant the  
22 waivers you are seeking.

23 Now, this is dated February 6, 2003, is that  
24 correct?

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**DEPOSITION OF CRAIG MACDONNELL**

MINIDEP by Kenson

1 A The email from Jacobs to Sommerlad?  
 2 Q Yes.  
 3 A Yes.  
 4 Q So, you had reason to believe in early February, long  
 5 before the acceptance of the assignment, that there  
 6 were going to be problems with zoning for the two lots  
 7 in question, didn't you?  
 8 MR. CONROY: Objection.  
 9 A We knew it would be a challenging subdivision that  
 10 would require relief from the relevant boards.  
 11 Q But I thought you testified, sir, that you didn't have  
 12 any inkling that there was going to be a problem until  
 13 well after the acceptance of the assignment and it was  
 14 well into the process. In fact, you did have  
 15 knowledge very early on, even before you accepted the  
 16 assignment, that you weren't going to get approvals  
 17 from the Planning Board. Isn't that fair to say?  
 18 MS. ECKER: Objection.  
 19 MS. FETOUH: Objection.  
 20 MR. CONROY: Objection.  
 21 A I think you're confusing two issues.  
 22 Q What are the two issues I'm confusing?  
 23 A One is whether there was an analysis to be had on the  
 24 front end about which waivers, which variances, which

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1 permits, were required and which path through that  
 2 process was appropriate. My recollection is that that  
 3 issue was wrestled with and that Karen Kelleher, in a  
 4 meeting with TPL, led us to believe that those issues  
 5 could be resolved. So, later on, however, in the  
 6 process, another more complicating factor emerged, so  
 7 that when I was referring to the problem earlier -- do  
 8 you follow me?  
 9 Q Yes.  
 10 A That I was referring to the problem that developed  
 11 later rather than the analysis, sort of the just  
 12 working through the kinks on the front end.  
 13 Q Let's go to the purchase and sale agreement, if you  
 14 would. Where in the purchase and sale agreement  
 15 between Mrs. Kunelius and Co-housing does it discuss  
 16 zoning changes, special permits or variances?  
 17 A I don't believe there's any reference to those issues  
 18 in the contract.  
 19 Q So, the insertion of a zoning variance, special  
 20 permit, subdivision issues, those three issues, was  
 21 made by TPL since it's not discussed in the purchase  
 22 and sale agreement itself.  
 23 A We're not inserting anything. I'm not suggesting that  
 24 the subdivision issue is a contract contingency. It's

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1 a fund-raising obstacle.  
 2 Q So, let me move back. This is the first time I've  
 3 heard that.  
 4 So, your refusal to move forward and  
 5 purchase the property did not result from the  
 6 failure to get a subdivision plan approved, or  
 7 any variances or permits that would be needed,  
 8 for the project that you envisioned to be built  
 9 on the site rather than what Mosaic Commons  
 10 envisioned. Is that correct?  
 11 MR. CONROY: Objection.  
 12 MS. FETOUH: Objection.  
 13 A What I'm saying is that the difficulty TPL encountered  
 14 in achieving the subdivision was not related to the  
 15 contract per se at all. It was a project issue that  
 16 prevented TPL from subdividing 142 and 144 and thus  
 17 realizing on the sale of the separate lots.  
 18 Q You realize, sir, that Mrs. Kunelius lost the  
 19 opportunity to sell the property to Mosaic Commons as  
 20 a result, direct result, of the actions of TPL in  
 21 accepting the assignment and then failing to go  
 22 forward in the purchase.  
 23 MS. FETOUH: Objection.  
 24 MR. CONROY: Objection.

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1 Q Do you realize that?  
 2 A Is that a question?  
 3 Q Yeah.  
 4 A I believe that the contract played out as it was  
 5 intended, to either enable Mosaic or the assignee to  
 6 go forward under the contract.  
 7 Q But, in fact, neither did. Isn't that correct?  
 8 A In fact, the contract imagined either a sale or a  
 9 default, and the default resulted in liquidated  
 10 damages. That was the end of the contract.  
 11 Q Is it your testimony that you believe Mrs. Kunelius  
 12 anticipated that TPL -- strike that.  
 13 Prior to TPL scoping out Mrs. Kunelius'  
 14 property, did you ever meet with her?  
 15 A Prior to scoping it out?  
 16 Q Yeah.  
 17 A No, I believe we spoke on the phone and met through  
 18 the course of the project.  
 19 Q But is it your testimony that you believe  
 20 Mrs. Kunelius anticipated that TPL would come in  
 21 and then default and that she would lose, as a  
 22 result of that default, the opportunity to sell  
 23 the property to Mosaic Commons?  
 24 MR. CONROY: Objection.

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1 MS. FETOUH: Objection.  
 2 MS. ECKER: Objection.  
 3 A I have no idea what Mrs. Kunelius --  
 4 Q Do you have an understanding that Mrs. Kunelius had  
 5 considered such an outcome when she was negotiating  
 6 her deal with Mosaic Commons?  
 7 MR. CONROY: Objection.  
 8 MS. FETOUH: Objection.  
 9 A Given that I wasn't in the room when she was talking  
 10 about this contract with her attorney, I have no idea  
 11 what she anticipated.  
 12 Q Looking at Paragraph 1, 2, 3, 4, of the purchase and  
 13 sale agreement, since I don't think anyone disagrees,  
 14 at least for the purposes of today, that those apply,  
 15 or perhaps they don't. Do you agree that all of those  
 16 provisions, 1, 2, 3 and 4, of the purchase and sale  
 17 agreement apply to TPL?  
 18 A Well, I'll go through them one by one. Should I do  
 19 that?  
 20 Q Sure.  
 21 A Paragraph 1 speaks in terms of the seller and the  
 22 buyer, and the buyer is listed as Co-housing  
 23 Resources, not TPL.  
 24 Q Right.

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1 A Of course, the operation of 61 would alter that.  
 2 Paragraph 2 talks about the property. Paragraph 3  
 3 talks about the buildings. Paragraph 4 talks about  
 4 title.  
 5 Q Well, let me stop at Paragraph 3 for a minute. It  
 6 says in as-is condition, does it not?  
 7 A Those are the last three words of Paragraph 3.  
 8 Q Do you have an understanding as to what as-is  
 9 condition means?  
 10 A I do.  
 11 Q And what is your understanding?  
 12 A That the property is sold as is.  
 13 Q Not with additional subdivisions, doesn't mention  
 14 that. Doesn't mention additional permits. It says as  
 15 is, isn't that correct?  
 16 MS. FETOUH: Objection.  
 17 MR. CONROY: Objection. It says what  
 18 it says.  
 19 Q Well, you don't see anything in there that talks about  
 20 additional provisions such as subdivisions or permits  
 21 or anything.  
 22 A As I mentioned a minute ago, the question of  
 23 subdivision is not a contract -- just allow me to  
 24 finish -- is not a contract issue that TPL is raising.

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**DEPOSITION OF CRAIG MACDONNELL****MINIDEP by Kenson**

1 It's a fund-raising issue.  
 2 Q Have you ever made such a statement to the court, that  
 3 the subdivision issue was a function of the fund-  
 4 raising and that's why it didn't have the money?  
 5 MS. FETOUH: Objection.  
 6 MS. ECKER: Objection.  
 7 MR. CONROY: Objection. This  
 8 deposition is out of control. I will say that on  
 9 the record. And there comes a time when it gets  
 10 out of control.  
 11 MR. McLAUGHLIN: I have to say I am  
 12 just totally appalled, sir. I am appalled by  
 13 this --  
 14 MR. CONROY: Well, I'm sorry to hear  
 15 you're appalled. Now, why don't you ask a  
 16 factual question and go forward.  
 17 MR. McLAUGHLIN: I am just appalled at  
 18 the behavior of this man who is a member of the  
 19 bar. I am appalled.  
 20 MS. FETOUH: Objection.  
 21 MR. CONROY: I am going to walk out of  
 22 this room the next time that gets said or  
 23 anything of that sort gets said.  
 24 MR. McLAUGHLIN: You go ahead.

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1 with the requirements related to registered land.  
 2 Q Paragraph 7, Purchase Price, I'm going to direct your  
 3 attention to the amount of the deposit listed under  
 4 Paragraph 7. How much of a deposit was made under  
 5 this provision?  
 6 A The first line says zero.  
 7 Q And noting the bottom of the compilation of numbers  
 8 there, four hundred thousand promissory note secured  
 9 by a mortgage, do you see that?  
 10 A Yes.  
 11 Q It has an asterisk that refers to Paragraph 30 for  
 12 further terms and provisions.  
 13 A Yes.  
 14 Q And turn to Paragraph 30. Now, this is the paragraph  
 15 that you had already looked at. My question to you  
 16 now is: does Paragraph 30, is this an obligation of  
 17 Mrs. Kunelius under the terms of the purchase and sale  
 18 agreement?  
 19 MS. FETOUH: Objection.  
 20 MR. CONROY: Objection.  
 21 A Based on my own perception of this contract, not from  
 22 TPL's perception, it would require Mrs. Kunelius to  
 23 make that mortgage a part of the assigned  
 24 relationship.

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1 MR. CONROY: And you can talk to Judge  
 2 O'Toole and tell him, and I hope the stenographer  
 3 is getting this. You can tell him and defend to  
 4 him why you are abusing this witness. If you  
 5 want to ask a question, ask it, and he will  
 6 answer it.  
 7 MR. McLAUGHLIN: Do not, do not, point  
 8 your finger at me.  
 9 MR. CONROY: I'll point anything I want  
 10 at you. Go ahead and ask your question.  
 11 MR. McLAUGHLIN: If you'd like to walk  
 12 out of this, you do anything you want. The rules  
 13 are the rules. If you want to disregard the  
 14 rules, that's fine.  
 15 MR. CONROY: Yeah, the rules include,  
 16 the ethical rules include, not abusing a witness.  
 17 So, let's continue.  
 18 MR. McLAUGHLIN: I understand your  
 19 frustration based upon what's happened already in  
 20 this deposition, because -- I understand all of  
 21 your frustrations, because I can't believe that  
 22 there is a six million dollar line of credit and  
 23 all of you told the judge that there was no money  
 24 available.

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1 Q And you would agree that the mortgage is secured by  
 2 the 8.57 parcel as we've already discussed?  
 3 A We have already discussed that.  
 4 Q And looking at the time for performance, number eight,  
 5 is that time for performance applicable to TPL?  
 6 A I would say the first sentence is. The reference to  
 7 Chapter 40B would not apply.  
 8 Q So, the time for performance by TPL was September 26,  
 9 2003, correct?  
 10 A That's what the contract says.  
 11 Q Did you perform at that time?  
 12 A Did we bring the purchase price to the table on that  
 13 date?  
 14 Q Yes.  
 15 A No.  
 16 Q Now, is it your understanding that the bold language  
 17 of Paragraph 8 did not apply to TPL or was optional  
 18 for TPL?  
 19 A Well, based on my own understanding of the provision  
 20 and my own understanding of the law, the Chapter 40B  
 21 related extension would be inapposite to TPL.  
 22 Q And by inapposite, meaning that it just would be  
 23 inapplicable, it would be inappropriate based upon the  
 24 goals and directions of TPL as a conservation

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1 MR. CONROY: Okay. Go ahead.  
 2 MR. McLAUGHLIN: Good luck. Not all  
 3 but maybe all.  
 4 Q All right. Let's look to number four. Did the title  
 5 provision apply to TPL?  
 6 A Based on sort of my own perception of this?  
 7 Q That's right. All of these are based upon your  
 8 perception as the director of the Massachusetts branch  
 9 of TPL.  
 10 A By your question, I assume you're asking whether or  
 11 not TPL, as the assignee, has the right to require  
 12 Mrs. Kunelius to provide good title.  
 13 Q I presume that that's what I mean.  
 14 A Well, if that's what you mean, I'll answer. I don't  
 15 want to guess about what you mean.  
 16 Q Does Paragraph 4, is that obligation applicable to  
 17 TPL?  
 18 A I believe it's applicable to Mrs. Kunelius. It  
 19 requires her to deliver good title.  
 20 Q Five, Paragraph 5?  
 21 A It requires Mrs. Kunelius to deliver the plan  
 22 referenced there.  
 23 Q Six?  
 24 A I would say that would require Mrs. Kunelius to comply

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1 foundation.  
 2 A No. No.  
 3 Q What do you mean by inapposite, then?  
 4 A It means, I mean, that TPL would not be in the  
 5 business of applying for a Chapter 40B approval.  
 6 Q But there was nothing that prevented TPL from moving  
 7 forward and obtaining a 40B approval, except that TPL  
 8 did not want to. Is that correct? Is there anything  
 9 in this contract, I'm taking about, that prevents TPL  
 10 from doing that?  
 11 A No.  
 12 Q In fact, this contract anticipates that the buyer  
 13 would do that. Isn't that fair to say?  
 14 A Anticipates that Mosaic Commons would.  
 15 Q And you testified before that TPL steps into the shoes  
 16 of Mosaic Commons, correct?  
 17 A I have.  
 18 Q And would it be your testimony that Mrs. Kunelius  
 19 should have understood that maybe TPL may also want to  
 20 do a 40B?  
 21 MS. FETOUH: Objection.  
 22 A I have no idea what she would have expected.  
 23 Q Number nine, does this apply to TPL?  
 24 A I believe it would require Mrs. Kunelius to comply

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## DEPOSITION OF CRAIG MACDONNELL

MINIDEP by Kenson

1 with that paragraph.  
 2 Q Number ten?  
 3 A I believe the printed paragraph before the asterisk  
 4 would enable Mrs. Kunelius to perfect title and go  
 5 forward.  
 6 Q Number eleven and twelve are related. So, I'm going  
 7 to ask you, at any time, did you determine that  
 8 Mrs. Kunelius had failed to provide the property  
 9 in accordance with what she was required to do by  
 10 way of title defect? Did you identify any title  
 11 defects?  
 12 A I don't recall any title defects.  
 13 Q So, twelve really doesn't apply because no defects  
 14 were identified. What about thirteen?  
 15 A I haven't read Paragraph 12 yet, but I'll move on to  
 16 thirteen. Or eleven. Okay. I believe Mrs. Kunelius  
 17 could, based on my own understanding, could ask that  
 18 TPL live by the terms of Paragraph 13.  
 19 Q Fourteen?  
 20 A That would enable Mrs. Kunelius to clear title with  
 21 purchase.  
 22 Q Fifteen?  
 23 A Fifteen, based on my own understanding, would require  
 24 Mrs. Kunelius to maintain insurance on the property.

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1 Q Sixteen, seventeen, together, since they deal with  
 2 adjustments, would you agree that at the time of  
 3 closing, TPL would have the right to make adjustments  
 4 on fees paid for water, sewer and so forth, and  
 5 Mrs. Kunelius would have the right to recover on  
 6 amounts that had already been paid but not fully  
 7 accrued?  
 8 A I'm just going to read these quickly.  
 9 Q Okay.  
 10 A It appears as if 16 and 17 could be utilized by both  
 11 Mrs. Kunelius and the assignee.  
 12 Q Who was going to pay the brokerage fee under eighteen?  
 13 A The language of Paragraph 18 suggests that a brokerage  
 14 fee would be paid by the seller.  
 15 Q Nineteen is probably inapplicable to this situation.  
 16 The deposit described in 20, were deposits made?  
 17 A Yes.  
 18 Q Were these the earnest money deposits that are  
 19 described in Paragraph 31?  
 20 A I believe TPL made what are described in Paragraph 31,  
 21 or made deposits, however they're described, to  
 22 Mrs. Kunelius.  
 23 Q Do you differentiate between a deposit and earnest  
 24 money?

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1 A It's been my understanding that a deposit is a deposit  
 2 is a deposit.  
 3 Q And is earnest money earnest money earnest money?  
 4 A My understanding all along is that whatever had been  
 5 paid ahead of time before the purchase price, before  
 6 the closing, excuse me, was a deposit.  
 7 Q And is that because of your understanding of normal  
 8 real estate procedure in which money was put down to  
 9 hold the property?  
 10 A It's my recollection of this transaction.  
 11 Q Did you have any understanding that the earnest monies  
 12 described in Paragraph 31 were to be used as living  
 13 expenses by Mrs. Kunelius during the pendency of the  
 14 40B approval process?  
 15 A No.  
 16 Q So, is it fair to say there's nothing in this contract  
 17 that says that, but did you have any separate  
 18 understanding that the money that was being given to  
 19 Mrs. Kunelius, that fifteen hundred dollars a month,  
 20 was because she didn't have any money to live on and,  
 21 therefore, Co-housing agreed that they would pay her  
 22 living expenses while they went forward?  
 23 A No.  
 24 Q Today is the first time you've heard that?

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1 A Yes.  
 2 Q On Paragraph 21, that's the provision that you believe  
 3 applies, is that correct, on liquidated damages?  
 4 A I do believe, on my own personal understanding of the  
 5 contract, that Paragraph 21 applies.  
 6 Q Twenty-two, 23, 24, don't seem to apply. Twenty-five?  
 7 A Based on my own understanding of the contract, I  
 8 believe Paragraph 25 would apply.  
 9 Q So, representations made by you on behalf of TPL would  
 10 apply to this purchase. Is that fair to say? Is that  
 11 how you read that?  
 12 MS. FETOUH: Objection.  
 13 MS. ECKER: Objection.  
 14 MR. CONROY: Objection.  
 15 A The way I read that is as follows: the buyer  
 16 acknowledges that the buyer has not been influenced to  
 17 enter into this transaction nor has he -- I guess, in  
 18 this case, she -- relied upon any warranties or  
 19 representations not set forth or incorporated in this  
 20 agreement. And it goes on.  
 21 Q And TPL is the buyer?  
 22 A TPL is the assigned buyer.  
 23 Q Mortgage contingency clause refers to 80 percent of a  
 24 project construction price. Under your understanding

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1 of this contract, could you have borrowed money, TPL  
 2 have borrowed money, construction loan, and have it  
 3 secured by the property?  
 4 MR. CONROY: Objection.  
 5 A Based on my own understanding of the contract, this is  
 6 exactly the kind of provision that would not apply to  
 7 TPL.  
 8 Q That's by election of TPL. In other words, if TPL  
 9 were to elect to have a project construction price, I  
 10 mean, a conventional financing, they could do that.  
 11 TPL could have availed themselves of this provision,  
 12 correct?  
 13 MS. FETOUH: Objection.  
 14 MS. ECKER: Objection.  
 15 MR. CONROY: Objection.  
 16 A Well, speaking on my own understanding of the  
 17 contract, it appears that Paragraph 26 was designed to  
 18 enable -- we've been saying Mosaic Commons, but it's  
 19 actually Co-housing Resources -- to borrow money to  
 20 build the project that they imagined, and since that  
 21 notion really is inapposite to what TPL was intending  
 22 to do, it seems to me that Paragraph 26 would not be  
 23 available for TPL to rely on.  
 24 Q That's because TPL wouldn't do the 40B. Is that

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1 correct?  
 2 A It's because that provision imagines a large-scale  
 3 construction on the property.  
 4 Q So, it is important for you to consider what the  
 5 provision must have imagined at the time that it was  
 6 entered into in order for it to have some validity in  
 7 the contract. Is that your testimony?  
 8 MS. FETOUH: Objection.  
 9 A My testimony is, on my own personal understanding of  
 10 the law, is that a court would require some provisions  
 11 to apply and others not to apply and that there would  
 12 be an analysis conducted by a judge, if this were ever  
 13 put to a judge, that would figure out which provisions  
 14 are applicable to an assignee and the assignee's  
 15 purpose under the statute.  
 16 Q Where does it say that, under the statute? Have you  
 17 ever found any particular portion of the statute that  
 18 deals with what the intention of the assignee or his  
 19 purpose might be, his or its purpose?  
 20 A What I'm referring to is the lore and the common law  
 21 under Chapter 61A that's understood by Chapter 61A  
 22 practitioners.  
 23 Q So, you've had some experience identifying what  
 24 Chapter 61A practitioners do as a matter of course.

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## DEPOSITION OF CRAIG MACDONNELL

MINIDEP by Kenson

1 How did you establish what that was?  
 2 A It's through working with them.  
 3 Q Any other provision of the purchase and sale agreement  
 4 that you believe -- well, which one are we on here?  
 5 We're on the mortgage contingency, the construction of  
 6 the agreement, lead paint law, smoke detectors. The  
 7 purchase price financing, we have already discussed.  
 8 The earnest money, we have discussed. The 40B  
 9 application and transfer of the land, I think you've  
 10 discussed. Are there any other provisions? For  
 11 example, let's go to thirty-five.  
 12 A I don't think I have an opinion on that one.  
 13 Q Well, you would agree with me, wouldn't you, that the  
 14 seller was not going to convey the entire parcel to  
 15 Co-housing but, rather, was going to convey 8.57 acres  
 16 only, and that the purchase price was for the 8.57  
 17 acres only and that the remaining parcel would be  
 18 transferred as a charitable contribution to the town?  
 19 Isn't that correct?  
 20 A Paragraph 35 contemplates that.  
 21 Q But that's not what TPL contemplated, is it? In other  
 22 words, TPL did not contemplate spending 1.116 million  
 23 dollars for the 8.57 acres, did it?  
 24 MS. FETOUH: Objection.

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1 A I think it imagines, speaking of my own understanding  
 2 of the contract, that it would have the ability to  
 3 control the whole parcel and achieve the conservation  
 4 project that we've talked about.  
 5 Q Your answer, therefore, is that TPL did not want to  
 6 comply with a strict reading of Paragraph 35 because  
 7 TPL wanted to control the whole parcel. Is that fair  
 8 to say?  
 9 MS. ECKER: Objection.  
 10 MS. FETOUH: Objection.  
 11 MR. CONROY: Objection.  
 12 A No, I'm saying that our intention was to have that  
 13 parcel, a conservation parcel that in our minds was  
 14 that parcel, go to the town and that there be a  
 15 development on a portion adjacent to Red Acre Road  
 16 that would bring enough dollars to be able to pay  
 17 Mrs. Kunelius.  
 18 Q Or pay back TPL had they borrowed on their line of  
 19 credit.  
 20 A Our intention was to pay Mrs. Kunelius.  
 21 Q But that money from the parcel development was  
 22 intended, at least initially, according to the  
 23 statements that you made to the Commonwealth of  
 24 Massachusetts, that that development would pay back

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1 TPL for the money it borrowed under its line of credit  
 2 with Wainwright Bank.  
 3 MS. FETOUH: Objection.  
 4 A If TPL decided to borrow the money.  
 5 Q So, the crux of the issue, from your point of view, is  
 6 that it was simply an issue of whether TPL decided it  
 7 wanted to borrow or not. If it didn't, then it  
 8 wouldn't. If it did, Mrs. Kunelius would be paid. Is  
 9 that fair?  
 10 MS. FETOUH: Objection.  
 11 A No.  
 12 Q What's unfair about that?  
 13 A What I've tried to help you understand is that TPL's  
 14 mission was to complete this project. The way we  
 15 would go about that would be to raise money in these  
 16 various ways. If it appeared likely that either  
 17 private fund-raising or private sales were going to  
 18 come together successfully, then TPL would have  
 19 considered borrowing ahead of time, but where, in this  
 20 case, where it seemed so unlikely that those various  
 21 sources of money would come back to TPL, that it would  
 22 not have been prudent for TPL to borrow.  
 23 Q So, it was the fact that TPL faced a risk of loss that  
 24 was the reason that they didn't go forward. When you

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1 were doing that analysis, is it fair to say that you  
 2 became aware that Mosaic Commons had been dissuaded  
 3 from re-applying to purchase the property and get a  
 4 40B because of the activities of TPL and the Town of  
 5 Stow?  
 6 MS. FETOUH: Objection.  
 7 MR. CONROY: Objection.  
 8 A No.  
 9 Q Did you ever have discussions with anyone from Mosaic  
 10 Commons or Co-housing?  
 11 A Yes.  
 12 Q Are you aware that Mosaic Commons believes that TPL  
 13 and the Town of Stow were intentionally trying to  
 14 dissuade it from coming back and purchasing the  
 15 property under the 40B requirement?  
 16 MR. CONROY: Objection.  
 17 A I am not aware of that.  
 18 Q Are you aware of any conversations between yourself  
 19 and anyone from the town dealing with the fact that  
 20 the town members were pleased with your efforts  
 21 because it resulted in the 40B being defeated, in  
 22 effect, because Mosaic Commons would not come back?  
 23 MS. ECKER: Objection.  
 24 MR. CONROY: Objection.

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1 A No.  
 2 Q It is your testimony that no one ever said to you that  
 3 the outcome prevented low-income housing from being  
 4 adjacent to the properties and the Red Acre Road and  
 5 that that was a result that a lot of people hoped to  
 6 achieve?  
 7 A I don't recall anyone saying that to me in so many  
 8 words, no.  
 9 Q Do you recall them saying it to you in some other  
 10 fashion?  
 11 A Well, I have an understanding, and, actually, as I sit  
 12 here now, I don't know where that understanding came  
 13 from, but I believe that the Friends of Red Acre were  
 14 disappointed this overall project did not go forward  
 15 but were not unhappy about Mosaic Commons not being  
 16 there.  
 17 Q And that's because Mosaic Commons was low-income  
 18 housing. Isn't that correct?  
 19 A Well, I can't say that.  
 20 Q Was there any other reason that you had heard as to  
 21 why the abutter would be happy that Mosaic Commons was  
 22 not going to be coming, other than the fact that the  
 23 housing they were going to be putting in was low-  
 24 income?

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1 MS. FETOUH: Objection.  
 2 A Part of the justification of this conservation project  
 3 was that this was a delicate aquifer area. So, many  
 4 folks saw this conservation project as a way of  
 5 protecting Stow's water supply and that the absence of  
 6 any development on Mrs. Kunelius' land was good for  
 7 the water supply in the Town of Stow, and I think the  
 8 absence of a development on that property does result  
 9 in the protection of that water supply. So, that  
 10 would be another reason why people would be not  
 11 unhappy that Mosaic Commons is not around anymore.  
 12 MR. CONROY: When you're ready, five  
 13 minutes, ten minutes?  
 14 MR. McLAUGHLIN: Sure. I'll ask one  
 15 question and we'll take a break.  
 16 Q On February 11th, there was a town Board of  
 17 Selectmen's meeting concerning TPL, and I think you've  
 18 already testified that you attended that meeting. I'm  
 19 going to put before you the following document.  
 20 (WHEREUPON, Exhibit No. 17, Stow Board  
 21 of Selectmen meeting, February 11, 2003, marked  
 22 for identification.)  
 23 Q I'd ask you to look at the second page. These appear  
 24 to be minutes, although I can't tell exactly what they

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**DEPOSITION OF CRAIG MACDONNELL**

MINI DEP by Kenson

1 are. It's a February 11th document. At the top is  
 2 Stow Board of Selectmen Meeting. It talks about  
 3 handouts. Some of it's written in the first person.  
 4 I don't know whether these are minutes or not.  
 5 Pointing to the second page, the last two  
 6 paragraphs say: If TPL can complete this deal  
 7 without additional cost to the taxpayers, I urge  
 8 you, then, to vote the way that the townspeople  
 9 have demonstrated at the polls, conservation, and  
 10 assign the right of first refusal under Chapter  
 11 61B to Trust for Public Land. Otherwise, the  
 12 proposed 40B development will have a negative  
 13 irreversible effect on the Red Acre community and  
 14 the Town of Stow.  
 15 When you were at that meeting, were you  
 16 aware that there were people who were against the  
 17 40B simply because it would have a negative  
 18 effect on the community?  
 19 A Well, I don't recall this fellow, Drew Simmons, being  
 20 there, but apparently he's one.  
 21 Q So, you don't recall that discussion?  
 22 A I don't recall his presentation. I don't know if he  
 23 made a presentation. I've never seen this before, so  
 24 I don't know what it is.

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1 Q Okay. I'm going to put before you another document,  
 2 which is a compilation of documents from the Stow  
 3 Conservation Commission.  
 4 (WHEREUPON, Exhibit No. 18, Stow  
 5 Conservation Commission documents, marked for  
 6 identification.)  
 7 Q I'd ask you to look to Bate stamp No. 154, and on that  
 8 Bate stamp number are Stow conservation minutes, April  
 9 15, 2004. Going down to about three-quarters of the  
 10 page down, Trust for Public Land/Kunelius parcel, it  
 11 states: Craig MacDonnell, of the Trust for Public  
 12 Land, TPL, and Carol Sommerlad, of the Friends of Red  
 13 Acre, requested a meeting with the Commission to give  
 14 them an update on their progress with the Kunelius  
 15 property on Red Acre Road. The Board of Selectmen  
 16 assigned the right of first refusal to TPL for the 50-  
 17 acre Kunelius Farm located on Red Acre, preventing a  
 18 40B Co-housing development.  
 19 So, you were aware, certainly, that your  
 20 efforts with TPL had the effect of preventing a  
 21 40B development. Is that fair to say?  
 22 A Were we successful in conserving the property, the  
 23 property would have been conserved and not developed.  
 24 Q Under 40B.

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1 A Correct.  
 2 Q And you are aware, also, that under 40B there were no  
 3 permits or variances required by Co-housing in moving  
 4 forward. Isn't that correct?  
 5 MS. ECKER: Objection.  
 6 MS. FETOUH: Objection.  
 7 A I don't know. I mean, I don't have a thorough  
 8 understanding Chapter 40B.  
 9 Q Well, under the provisions of the purchase and sale  
 10 agreement, there were no contingencies for the  
 11 obtaining of variances or permits by Co-housing.  
 12 Isn't that fair to say?  
 13 A Yes.  
 14 Q And the only contingency under the purchase and sale  
 15 agreement was for some sort of feasibility study by  
 16 Co-housing. Is that fair to say?  
 17 A I could go back and double-check the contract if you'd  
 18 like.  
 19 Q You don't recall offhand. Is that your testimony?  
 20 A Well.  
 21 Q That's all right.  
 22 A It's late in the day and I've been looking at a lot of  
 23 documents. I'd be happy to go back and take a look at  
 24 it.

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1 Q No, that's all right. Do you recall, when you had a  
 2 discussion with Mrs. Kunelius, that she told you that  
 3 the reason that she agreed to the Co-housing purchase  
 4 price of \$1,116,900 was because, in effect, while it  
 5 was less than she wanted, there was a certainty of  
 6 collection because it was a 40B and did not require  
 7 any variances or permits? Do you remember her telling  
 8 you that?  
 9 A No.  
 10 Q As you sit here today, are you testifying that she did  
 11 not tell you that or that you do not remember that?  
 12 A I have no recollection of her saying that.  
 13 Q If she were to testify that she did say that, would  
 14 you testify that she did not?  
 15 MR. CONROY: Objection.  
 16 MS. FETOUH: Objection.  
 17 MS. ECKER: Objection.  
 18 Q Or that you did not remember it?  
 19 A I would be surprised to hear that testimony.  
 20 Q Do you recall anything in a discussion with her  
 21 concerning the fact that the certainty of payment with  
 22 Co-housing under the 40B ensured that her retirement  
 23 would be available to her? Do you recall anything  
 24 like that?

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1 A I remember a reference to retirement. I don't recall  
 2 the reference being in the context of Chapter 40B.  
 3 Q Do you recall her telling you that she had no money?  
 4 A No.  
 5 Q Did you ever go out on the site?  
 6 A Uh-huh.  
 7 MR. CONROY: Yes or no.  
 8 A Yes, I did go on the site.  
 9 Q What was the condition of the house?  
 10 A I never went in the house. I only saw it from the  
 11 outside.  
 12 Q What was the condition of the barn?  
 13 A It needed repair.  
 14 Q Was it dilapidated?  
 15 A You know, the structure was still pretty good. It  
 16 needed some work, but the basic timbers were fairly  
 17 strong.  
 18 MR. McLAUGHLIN: I'm going to read  
 19 something from the complaint and I'd like you to  
 20 leave.  
 21 (Mr. Norris exits the room.)  
 22 Q I'd like you to turn to Paragraph 46 of the complaint.  
 23 It reads as follows: In the spring of 2004,  
 24 MacDonnell met with Kunelius, Kunelius' counsel and

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1 Jim Boothroyd, and a local real estate broker, David  
 2 Norris, in connection with TPL's demands for a lower  
 3 purchase price. During that meeting, TPL threatened  
 4 and intimidated Kunelius and her counsel by stating,  
 5 generally, that TPL had serious and influential  
 6 connections by way of its Board of Advisors who would  
 7 defend TPL against any legal action brought by  
 8 Kunelius as a result of TPL's default.  
 9 I'm going to stop there and continue from  
 10 that point, but without commenting on Item No. 1  
 11 which I've just read, do you recall attending a  
 12 meeting with Kunelius, Kunelius' counsel,  
 13 Mr. Kachajian, Jim Boothroyd and David Norris and  
 14 others?  
 15 A Is this Mr. Norris here?  
 16 Q Yes.  
 17 A Yes, I do remember a meeting in Boothroyd's office  
 18 with them.  
 19 MR. CONROY: Before you ask the next  
 20 question, we've been going a long time. I'd like  
 21 to take a little break before we go further.  
 22 MR. McLAUGHLIN: Sure.  
 23 (Recess, 4:14 P.M.)  
 24 (After recess, 4:24 P.M.)

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## DEPOSITION OF CRAIG MACDONNELL

MINI DEP by Kenson

1 (Messrs. Kachajian and Norris not present)  
 2 By MR. McLAUGHLIN:  
 3 Q We were talking about the meeting, I think you said,  
 4 at Boothroyd's office. Do you remember if anyone  
 5 accompanied you from TPL to that meeting?  
 6 A I don't believe so.  
 7 Q Do you recall whether anyone from the town accompanied  
 8 you to that meeting?  
 9 MS. FETOUH: Objection.  
 10 A You know, I don't remember. There were so many of  
 11 these with various players.  
 12 Q Do you recall being assisted out of the room by one of  
 13 the individuals at that meeting because you had become  
 14 extremely angry, angry and agitated?  
 15 A No, that did not happen.  
 16 Q Do you know a Bob Wilbur?  
 17 A I do know Bob.  
 18 Q Do you recall, was Bob Wilbur at that meeting?  
 19 A Bob Wilbur was at several of these meetings. This  
 20 doesn't have a date on it.  
 21 Q You're looking at the complaint?  
 22 A Yes.  
 23 Q No, it doesn't not have a date. How well do you know  
 24 Jim Boothroyd?

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1 A I met Jim through this project.  
 2 Q Do you recall the discussion between yourself and  
 3 Mrs. Kunelius and her representatives as being heated?  
 4 A I remember this period of time continuing, actually,  
 5 into the fall, later -- what is the date, spring of  
 6 '04? Is that right?  
 7 Q Yes.  
 8 A I remember there were discussions in the spring and in  
 9 the summer and into the fall where TPL was trying very  
 10 hard to keep this project alive, and there were a  
 11 number of meetings to do that.  
 12 Q When you say they were trying to keep the project  
 13 alive, do you recall proposing a new purchase price  
 14 for the property?  
 15 A I recall trying to put together an alternative deal.  
 16 Q And did that include a new purchase price?  
 17 A Yes.  
 18 Q And do you recall doing that on at least two  
 19 occasions?  
 20 A Yes.  
 21 Q Do you recall asking that the price be reduced to  
 22 \$900,000?  
 23 A I remember, I believe, eight hundred and nine hundred.  
 24 Q Okay. Saved me the question. Under the terms of the

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1 purchase and sale agreement, did you believe you had  
 2 the right to change the purchase price?  
 3 A The contract was over at that point. We weren't  
 4 talking about the contract anymore.  
 5 Q So, you viewed the contract as dead at that point?  
 6 A Yes.  
 7 Q Back to the meeting. Do you recall getting into an  
 8 argument with Mr. Kachajian and then threatening him  
 9 in any way?  
 10 A I remember having a discussion where TPL was trying  
 11 very hard to come up with an alternative plan that  
 12 would get a significant amount of money into  
 13 Mrs. Kunelius' pocket, and what I remember is  
 14 that we weren't making any progress on that front  
 15 and that Mr. Kachajian and I went back and forth  
 16 on whether or not this was possible or not, and I  
 17 believe Mr. Kachajian was not encouraging this  
 18 outcome, and I was trying my best to encourage  
 19 him that it's a good opportunity for  
 20 Mrs. Kunelius.  
 21 Q And the good opportunity you're talking about is  
 22 accepting a lower purchase price. Is that fair to  
 23 say?  
 24 A Lower than the contract price.

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1 Q And in the alternative, if she did not, that you would  
 2 not pay her anything at all and walk away.  
 3 A We had already walked away.  
 4 Q Now, back to Paragraph 46. Do you recall saying  
 5 something to the effect that TPL had serious and  
 6 influential connections by way of its Board of  
 7 Advisors who would defend TPL against any legal action  
 8 brought by Kunelius as a result of TPL's default? Do  
 9 you remember saying anything like that?  
 10 A I remember saying that we thought that, if necessary,  
 11 we would litigate this issue, because we thought we  
 12 were right, and that if we couldn't put a project  
 13 together now or then, after the contract was dead,  
 14 that we would look to our pro bono counsel to litigate  
 15 the issue, and because we thought we had a good case,  
 16 we thought we'd win.  
 17 Q And, in fact, the pro bono counsel was on your Board  
 18 of Advisors, and that was Goodwin, Procter & Hoar.  
 19 MS. FETOUH: Objection.  
 20 A Goodwin does represent us in this matter, and, you  
 21 know, whether I referred to them by name, I can't  
 22 remember.  
 23 Q You also had other counsel, pro bono counsel, on your  
 24 Board of Advisors, including Hill & Barlow?

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1 A If it was still Hill & Barlow then. I can't remember.  
 2 Q I think it was. But you recall them being on your  
 3 Board of Advisors?  
 4 A I do. Well, not the firm. There was --  
 5 Q Someone from Hill & Barlow?  
 6 A -- a lawyer from what I think was Hill & Barlow.  
 7 Q Do you recall referring to Choate, Hall & Stewart as  
 8 your counsel in that discussion with Mr. Kachajian?  
 9 A I don't.  
 10 Q Do you recall saying to Mr. Kachajian that your pro  
 11 bono counsel could bury him because it doesn't cost  
 12 you anything and Mrs. Kunelius couldn't afford to have  
 13 counsel represent her in the long run?  
 14 A I remember saying that I thought we had a really good  
 15 case and that, if necessary, we would litigate it and  
 16 that we would win because of the strength of our  
 17 position.  
 18 Q But you do not remember saying -- are you denying that  
 19 you said to anyone at that meeting that your counsel,  
 20 your pro bono counsel, would bury Mrs. Kunelius and  
 21 anyone who tried to represent her?  
 22 A I don't know if I used the word bury, but I was  
 23 vehement in my statements that we had a very strong  
 24 case.

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1 Q Do you recall saying that the Board of Advisors  
 2 included prominent law firms that would tie up  
 3 Kunelius for as long as it took?  
 4 A Not in those words, I don't recall, but I do remember  
 5 saying that we would litigate this to the end and that  
 6 we would win.  
 7 Q Do you recall saying that it would tie up whatever  
 8 assets she had and she couldn't possibly win,  
 9 something to that effect?  
 10 A I don't recall discussing assets. I recall discussing  
 11 the merits of the case and saying that, because of the  
 12 correctness of our position and the capacity of our  
 13 counsel, I believed we would prevail.  
 14 Q Do you recall saying to Mrs. Kunelius and the people  
 15 that were with her there that you knew she was of  
 16 limited means and that her attorney would not be able  
 17 to spend sufficient funds to win any matter against  
 18 TPL because of TPL's pro bono counsel which didn't  
 19 charge anything?  
 20 A What I can tell you is what I remember of that  
 21 meeting, in which I believe Mr. Kachajian and I  
 22 debated at length whether or not it was possible for  
 23 this project to be reconstructed, and we debated  
 24 lawyer to lawyer who would win the litigation if it

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**DEPOSITION OF CRAIG MACDONNELL****MINI DEP by Kenson**

1 came.  
 2 Q How well do you know Bob Wilbur?  
 3 A I know him in a professional capacity.  
 4 Q And do you know him to be an honest person?  
 5 A I have not experienced any dishonesty from Bob.  
 6 Q Is it your testimony today, after discussing this  
 7 meeting which you attended, that you still have no  
 8 recollection of Mr. Wilbur literally forcing you out  
 9 of the room to calm you down?  
 10 A I have a very explicit understanding of what happened  
 11 that day with respect to Mr. Wilbur and it had nothing  
 12 to do with him forcing me out of the room.  
 13 Q So, you have a pretty good and explicit memory as to  
 14 some things related to this case and some meetings,  
 15 and on this particular matter, you remember the actual  
 16 specifics of whether or not Mr. Wilbur took you out of  
 17 the room. If Mr. Wilbur testified that he did, would  
 18 that surprise you?  
 19 MS. FETOUH: Objection.  
 20 MS. ECKER: Objection.  
 21 A What I will say about that is that Bob asked me to go  
 22 out to the street to talk about how to refine our  
 23 position. We went outside. Mr. Boothroyd's office is  
 24 a storefront. We were meeting in the open space. We

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1 went outside, Bob and I, to discuss is it possible to  
 2 get another chunk of money on the table for  
 3 Mrs. Kunelius. We didn't discuss the hijinks or  
 4 whatever it was that went on inside. We talked  
 5 about the proposal we were trying to fashion for  
 6 Mrs. Kunelius. I discussed with Bob the  
 7 possibility of bringing additional Stow  
 8 Conservation Trust money to the table on the  
 9 sidewalk in Maynard. That was the reason we went  
 10 outside.  
 11 Q Were you yelling at Mr. Wilbur at that point, outside  
 12 on the sidewalk, do you recall?  
 13 A We were on the same team, if you will. We were trying  
 14 to keep this project together.  
 15 Q Do you recall swinging your fists and your arms in the  
 16 air when you were out on the sidewalk or during the  
 17 meeting when Mr. Wilbur left with you?  
 18 A I recall doing no such thing inside. Outside, I don't  
 19 have a recollection of whether I waved my arms in an  
 20 animated sort of way of helping me articulate what I  
 21 was saying, sort of like the way I am now, but there  
 22 was nothing intimidating about it.  
 23 MR. CONROY: Off the record?  
 24 (Brief discussion off the record)

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1 By MR. McLAUGHLIN:  
 2 Q When you left the meeting, after you had your meeting  
 3 out on the sidewalk with Mr. Wilbur, did you come back  
 4 into the meeting?  
 5 A I think we did.  
 6 Q I have referred to Bob Glassman in the past. I just  
 7 want to, to give you a sense -- I don't even need to  
 8 use this as an exhibit, but just so you have an  
 9 understanding, Bob Glassman is listed on your Web site  
 10 as the founder of Wainwright Bank and is on your Board  
 11 of Advisors. I want to again turn to  
 12 Mr. Glassman and what knowledge Wainwright Bank  
 13 had of references to that line of credit.  
 14 Are you aware of any correspondence between  
 15 TPL and Wainwright Bank regarding the disclosure  
 16 of the line of credit to the state as a backup  
 17 plan?  
 18 A I am not.  
 19 Q Are you aware of any restrictions on the line of  
 20 credit as to how much money can be taken out at a  
 21 particular time?  
 22 A I am not.  
 23 Q You were aware, were you not, that Mrs. Kunelius was,  
 24 during the summer of 2003, extremely worried about the

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1 status of the sale to TPL?  
 2 A I was aware from talking to her counsel that she was  
 3 concerned.  
 4 Q Did you ever call Mr. Kachajian prior to the  
 5 acceptance of the right of first refusal and say to  
 6 Mr. Kachajian or to Mrs. Kunelius, or any  
 7 representative of Mrs. Kunelius, including Boothroyd,  
 8 that it was your intention to rely on the liquidated  
 9 damage clause provision and that she should be aware  
 10 of that in case she wanted to take any steps to let  
 11 the town know of that prior to the town assigning the  
 12 right of first refusal to TPL?  
 13 MS. ECKER: Objection.  
 14 A No, I have no recollection.  
 15 Q Do you think, as an attorney, that you had any  
 16 obligation, dealing with an elderly woman, to inform  
 17 her of the likelihood or the chance that if the town  
 18 assigned the right of first refusal to TPL that TPL,  
 19 as a charitable institution, might in effect prevent  
 20 the sale to Mosaic Commons and leave Mrs. Kunelius  
 21 with no buyer?  
 22 MR. CONROY: Objection.  
 23 MS. FETOUH: Objection.  
 24 A Do I think as an attorney that I have an obligation or

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1 that TPL -- I'm just trying to --  
 2 Q Well, let's start with you. You, as an attorney, do  
 3 you think you had any obligation to be up front about  
 4 the possibility that Mrs. Kunelius would be left with  
 5 \$22,000 months after the fact with no one to purchase  
 6 her property?  
 7 MR. CONROY: Objection.  
 8 MS. FETOUH: Objection.  
 9 A An attorney who happens to be working for the Trust  
 10 for Public Land doing this project or?  
 11 Q Well, why don't we do this. TPL is a charitable  
 12 institution, is it not?  
 13 A It's a non-profit.  
 14 Q Well, I asked you earlier if it was a charitable  
 15 institution, and I thought you said yes. Is it not?  
 16 What's the difference between a charitable institution  
 17 and a non-profit?  
 18 MR. CONROY: Objection.  
 19 A You know, I should be accurate here. My understanding  
 20 is that it is a California not-for-profit corporation  
 21 that's registered as a 501c3.  
 22 Q And as a result, TPL has a tax-exempt status, right?  
 23 A Yes, that's my understanding.  
 24 Q And as a result of that, TPL, with its tax-exempt

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1 status, is able to obtain pro bono counsel and pro  
 2 bono advice and doesn't have to count it as income.  
 3 Is that correct?  
 4 MS. FETOUH: Objection.  
 5 MR. CONROY: Objection.  
 6 A I don't really know how TPL accounts for the provision  
 7 of pro bono services.  
 8 Q Do you recall trying to convince the Town of Stow to  
 9 re-describe the involvement of TPL in the Kunelius  
 10 property after the fact so that TPL could get a tax  
 11 deduction where otherwise it could not?  
 12 MR. CONROY: Objection.  
 13 MS. FETOUH: Objection.  
 14 MS. ECKER: Objection.  
 15 A TPL -- well, I have no such recollection of any  
 16 conversation like that.  
 17 Q Do you recall writing to Ross Perry and telling him  
 18 that you would like him to re-designate TPL's  
 19 activities on the Kunelius property from activities of  
 20 lobbying to activities of advice so that you could  
 21 claim deductions and have a tax benefit for that?  
 22 A No, that's not my memory.  
 23 (WHEREUPON, Exhibit No. 19, MacDonnell  
 24 email to Perry, dated April 17, 2003, marked for

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## DEPOSITION OF CRAIG MACDONNELL

MINIDEP by Kenson

1 identification.)  
 2 Q Exhibit 19 is before you. This appears to be a  
 3 letter, or an email, from Craig MacDonnell, with your  
 4 email address, to Ross and Bill. I believe it's Ross  
 5 Perry and perhaps Bill Wrigley, but I can't be sure,  
 6 but it goes to the town administrator, so it's  
 7 probably Bill Wrigley, the town administrator, in  
 8 which you, apparently, are revising letters for the  
 9 Board of Selectmen to you, in which you ask them to  
 10 write a letter on April 15, 2003, describing your  
 11 involvement as technical rather than lobbying. Do you  
 12 see that?  
 13 A I see the language under the heading Ross and Bill.  
 14 Q Now, up until April 15th, isn't it in fact true that  
 15 it was TPL's absolute intention from early January of  
 16 2003, at the latest, through the time of the  
 17 assignment, that TPL sought to acquire and control the  
 18 property known as the Kunelius Farm? Isn't that fair  
 19 to say that's what you were doing?  
 20 MR. CONROY: Objection.  
 21 A Pardon me. I just had a moment of lack of  
 22 concentration and I missed your question. Would you  
 23 mind restating it? I'm sorry.  
 24 Q Well, I'm interested here in your letter to Mr. Perry

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1 in which you write for him, it appears, in which you  
 2 are asking Mr. Perry, and, in fact, sir, I will inform  
 3 you that he does write such a letter on April 15th or  
 4 thereafter in which the letter seems to be asking for  
 5 technical advice, and the purpose of this letter seems  
 6 to be that the reason TPL needs it is because it  
 7 enables TPL to count more of the support work as  
 8 technical assistance rather than lobbying for IRS  
 9 purposes.  
 10 MS. FETOUH: Objection.  
 11 Q Now, in fact, TPL was lobbying for that property.  
 12 Isn't that fair to say?  
 13 MR. CONROY: Objection.  
 14 MS. FETOUH: Objection.  
 15 A TPL typically asks boards of selectmen for these kinds  
 16 of letters because the IRS recognizes the work that  
 17 TPL does in response to requests from boards of  
 18 selectmen as technical assistance rather than lobbying  
 19 if the record so reflects that. So, it's a normal,  
 20 every-project request that we ask boards of selectmen  
 21 to do this letter.  
 22 (Mr. Kachajian enters the room.)  
 23 Q Well, you may recall that I asked you at the beginning  
 24 of this deposition how you got involved with the

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1 Kunelius property, and your testimony was through  
 2 Mr. Christianson concerning the possibility of  
 3 establishing a conservation restriction on the  
 4 property. Is it your testimony that the  
 5 application for \$350,000 from the state was  
 6 advice work on behalf of the Town of Stow, or was  
 7 it lobbying?  
 8 MR. CONROY: Objection.  
 9 MS. FETOUH: Objection.  
 10 A I don't think I have a position on that. I mean, I  
 11 have never thought of that in one way or another, so  
 12 forgive me here, late in the day, for not having a  
 13 facile answer to that question.  
 14 (WHEREUPON, Exhibit No. 20, Friends of  
 15 Red Acre letter to Board of Selectmen, dated June  
 16 6, 2003, marked for identification.)  
 17 Q These two documents, which are Exhibit 20, were  
 18 together when we received them, so we kept them  
 19 together. The first one is from Friends of Red Acre  
 20 to the Town of Stow, and it is a letter to the Board  
 21 of Selectmen of the Town Stow signed by three people,  
 22 apparently, from the Friends of Red Acre. It's dated  
 23 June 6th. I'm going to ask you to just take a look at  
 24 that letter, because it would seem that this letter

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1 indicates that the Friends of Red Acre believed that  
 2 the deal was done as of June 6, 2003, and I would ask  
 3 you to read the letter and then tell me whether you  
 4 have any understanding concerning this letter.  
 5 A I read it.  
 6 Q Had you seen this before?  
 7 A I don't remember seeing it before.  
 8 Q Is it fair to say that the Friends of Red Acre had  
 9 been approached by you for fund-raising purposes?  
 10 A Yes.  
 11 Q Is it also fair to say that at some point in the fund-  
 12 raising process you approached them and told them not  
 13 to fund-raise because, for other reasons, you had  
 14 decided not to go forward with the development?  
 15 A I have no memory of telling Friends of Red Acre not to  
 16 fund-raise during the period of time that was sort of  
 17 relevant to the possibility of the project going  
 18 forward.  
 19 Q Is it your testimony that you did not tell them, or is  
 20 it your testimony that you have no recollection of not  
 21 telling them to fund-raise, of telling them not to  
 22 fund-raise, because you didn't want to go forward with  
 23 the project?  
 24 A I did not tell them not to fund-raise because TPL did

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1 not want to go forward with the project.  
 2 Q So, if any of these people were to testify, any of  
 3 these people listed here were to testify, that in fact  
 4 you did discourage them from fund-raising because TPL  
 5 did not want to go forward with the project, would  
 6 they be lying?  
 7 MS. FETOUH: Objection.  
 8 MS. ECKER: Objection.  
 9 MR. CONROY: Objection.  
 10 A I would be surprised.  
 11 Q Do you know Michael Labosky?  
 12 A I have met Michael, yes.  
 13 Q Did you ever have any discussions with him in which  
 14 you discouraged him from fund-raising?  
 15 A The reason I'm pausing is that over the course of, you  
 16 know, more than one year we talked about this project  
 17 a lot, this group of people and TPL. Towards the end  
 18 of that period of time, when the project was falling  
 19 apart, TPL discussed with Friends of Red Acre the fact  
 20 that it was falling apart, and during those  
 21 conversations, when the horizon was very dark, it made  
 22 sense for all of us to fold our tent.  
 23 Q Well, do you recall them questioning you as to why TPL  
 24 was not using the money that TPL said it had in its

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1 own funds or by way of line of credit in order to  
 2 effectuate the sale?  
 3 A Generally, I remember having discussions with this  
 4 group about how to keep the project together,  
 5 including where was the money going to come from, is  
 6 it borrowed; is it privately fund-raised. There were  
 7 many, many conversations along those lines.  
 8 Q But do you remember them questioning you as to why you  
 9 would not use the line of credit or any other funds  
 10 that you had referred to as capital?  
 11 A Yes.  
 12 (Mr. Norris enters the room.)  
 13 Q And do you recall them being angry at you or  
 14 dissatisfied with you because they felt that you had  
 15 misled them concerning the availability of funds that  
 16 TPL itself had or could obtain in order to effectuate  
 17 the purchase?  
 18 A I remember some difficult conversations about the  
 19 future of the project.  
 20 Q But not so much --  
 21 A I'm trying to answer your question.  
 22 Q I know, but you have a distinct method of answering  
 23 surrounding issues. I'm talking about just the issue  
 24 of were they angry at you for not using the line of

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**DEPOSITION OF CRAIG MACDONNELL****MINIDEP by Kenson**

1 credit or such other capital funds as you had  
 2 described to them previously, just that issue, line of  
 3 credit or capital funds.  
 4 A Do I remember anger related to line of credit?  
 5 Q Not being used.  
 6 A Not specifically.  
 7 Q Generally, do you remember it?  
 8 MR. CONROY: Remember anger?  
 9 Q Anger by the members of the Friends of Red Acre  
 10 because they were upset that you were not using either  
 11 the line of credit or such other capital funds as you  
 12 had referred to in the past with them.  
 13 A My memory regarding their frustration regarding the  
 14 pace of the project was, really, the frustration we  
 15 were all having with the private fund-raising. There  
 16 was a sense going into this project that there was a  
 17 very significant amount of private fund-raising easily  
 18 had in the Town of Stow in a small collection of  
 19 foundations and that when it became apparent later on  
 20 in the project that those identified sources of funds  
 21 and the dollars assigned to those funds were  
 22 overstated, there was a disconnect between TPL and the  
 23 Friends of Red Acre and there was upset over that  
 24 question.

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1 Q Was there also upset over the disconnect between your  
 2 description of private market funds and the line of  
 3 credit which you were now refusing to use?  
 4 MS. FETOUH: Objection.  
 5 A Okay. I've tried to testify that my memory regarding  
 6 this upset is not specific as to the line of credit.  
 7 It's regarding sort of the overall progress of the  
 8 project.  
 9 Q Do you recall reviewing an excerpt from your Web site  
 10 which referred to the ability of TPL to bridge the gap  
 11 when the town couldn't raise funds?  
 12 A The one you showed me earlier today?  
 13 Q Yes.  
 14 A Yes, I do remember that.  
 15 Q Do you recall Friends of Red Acre being angry at you  
 16 concerning your refusal to bridge the gap because you  
 17 had told them of TPL's ability to do so and it was  
 18 because you had that they had spent time trying to  
 19 fund-raise?  
 20 A My memory of this disconnect is related to the debate  
 21 between finances and financing, which was a question  
 22 of is it possible to raise the money necessary for the  
 23 project versus how do you finance it.  
 24 Q Well, do you not recall that the \$22,000 that was paid

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1 to Mrs. Kunelius by TPL was raised by the Friends of  
 2 Red Acre and that they were concerned and upset with  
 3 you once you decided that you were not going to borrow  
 4 the money from the line of credit and/or from your  
 5 private capital markets that you had referred to, and  
 6 there was an issue as to whether or not -- why you  
 7 were doing that when you had caused them to raise the  
 8 \$22,000, which was the entire amount of money that was  
 9 paid to Mrs. Kunelius?  
 10 MS. FETOUH: Objection.  
 11 MR. CONROY: Objection.  
 12 A I'd like to answer your question, but I really -- it's  
 13 so long that I'm afraid I don't understand it.  
 14 Q You would agree with me that \$19,000 has been paid to  
 15 Mrs. Kunelius under the terms of the purchase and sale  
 16 agreement.  
 17 A As I sit here today, I'm not certain how much has been  
 18 paid. I know that a significant amount has been paid.  
 19 Q Would you agree with me that the Friends of Red Acre  
 20 had raised \$22,000 and given it to TPL in order to  
 21 fund the -- what's the money called?  
 22 MR. KACHAJIAN: Earnest money?  
 23 Q Earnest money. That \$22,000 came from the Friends of  
 24 Red Acre.

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1 A I know the Friends of Red Acre raised some money for  
 2 the purposes of making deposits. I don't know how  
 3 much it was as I sit here today.  
 4 Q Did you give back any money to the Friends of Red Acre  
 5 that they raised that was not used for earnest money  
 6 payments to Mrs. Kunelius?  
 7 A I don't believe so.  
 8 Q Is it fair to say that the Friends of Red Acre were  
 9 very upset with you concerning this issue of TPL not  
 10 obtaining funds sufficient from their own resources,  
 11 TPL's own resources, and that, essentially, the  
 12 Friends of Red Acre believed that you had misled them?  
 13 Do you recall any discussions concerning that?  
 14 A My memory is that I had discussions with folks in  
 15 Friends of Red Acre about the same issues that we've  
 16 talked about today, the question being whether or not,  
 17 ultimately, any dollars would materialize that could  
 18 pay off any potential amount.  
 19 Q I'm going to have you look at Exhibit 14 again, if you  
 20 would.  
 21 A Yup.  
 22 Q I want you to look at Bate stamp No. 443.  
 23 A Yes.  
 24 Q Item No. 6. We have answers to 6A through D. Under

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1 Item No. C, letter C, is a note from the town relative  
 2 to the four hundred thousand dollar promissory note,  
 3 with seven percent interest, paid in full within 24  
 4 months, with monthly interest payments of \$2,333, TPL  
 5 states, to be paid from privately raised funds or from  
 6 the sale of the houses on the property. Do you see  
 7 that?  
 8 A Yes.  
 9 Q So, as to the issue of the \$400,000, is it fair to say  
 10 that, in fact, TPL absolutely intended to avail  
 11 themselves of the four hundred thousand dollar loan  
 12 from Mrs. Kunelius and that your method of repaying it  
 13 within 24 months was either the sale of the houses or  
 14 privately raised funds?  
 15 MS. FETOUH: Objection.  
 16 MS. ECKER: Objection.  
 17 MR. CONROY: Objection.  
 18 A With reference to Exhibit 14, Paragraph 6C, and the  
 19 bold sentence after the letters TPL, that sentence was  
 20 intended to communicate that the total of the four  
 21 hundred, as a whole, could be raised. We intended it  
 22 to be raised from those sources when I put this  
 23 together. That was our intention at that time.  
 24 Q What four hundred was it?

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1 A Did you ask me about 6C?  
 2 Q Yes.  
 3 A Okay. That's the one.  
 4 Q The four hundred thousand promissory note. You're  
 5 talking about raising money to pay off the four  
 6 hundred thousand dollar promissory note to  
 7 Mrs. Kunelius.  
 8 A Correct. Well, actually, I'd like to clarify that,  
 9 because the further along we got in this process,  
 10 whether our decision-making was correct or not about  
 11 the availability of the mortgage itself -- we've  
 12 talked about that a lot today -- it was our sense that  
 13 that mortgage was not available to us and that,  
 14 instead, TPL contemplated adding on to the four  
 15 hundred thousand the interest that Mrs. Kunelius would  
 16 have earned over the term, and I think that was  
 17 \$56,000.  
 18 So, I think our planning, for planning  
 19 purposes, four hundred was not four hundred. The  
 20 four hundred was 456,000, which we would need to  
 21 deliver at the time of closing.  
 22 Q But that was the term of the purchase and sale  
 23 agreement. Is it your testimony -- I'm not trying to  
 24 put words in your mouth. Your testimony is, as I now

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**DEPOSITION OF CRAIG MACDONNELL**

MINIDEP by Kenson

1 understand it, that you simply changed your mind about  
2 the terms of the purchase and sale agreement and did  
3 not want to borrow the money, the \$400,000. Am I  
4 right?

5 MS. FETOUH: Objection.

6 A No.

7 Q Let's look at Exhibit 12, I'm sorry, Exhibit 13. On  
8 Exhibit 13, which is the September 9th letter from you  
9 to Peter Kachajian --

10 (Mr. Kachajian exits the room.)

11 Q Strike that. Let's look at the third paragraph, which  
12 says, five lines down: TPL's Board of Directors will  
13 not approve any borrowing to bridge a fund-raising gap  
14 because the prospects of raising funds necessary to  
15 repay the loan required are not encouraging. Further,  
16 any bridge loan would be for an amount greater than  
17 the land would be worth even if the subdivision were  
18 approved.

19 Now, isn't it in fact true, sir, that what  
20 you have said today has not been accurate, in  
21 that one of the primary reasons that you did not  
22 go forward was that you did not like the purchase  
23 price of the property?

24 MS. FETOUH: Objection.

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1 A Is completely untrue.

2 Q So, when you state that the amount of the loan -- any  
3 bridge loan would be for an amount greater than the  
4 land would be worth even if the subdivision were  
5 approved, let me ask you something. How much money  
6 were you talking about when you said a bridge loan?

7 Were you talking about the \$400,000?

8 A As I sit here today, I don't know how much money I was  
9 talking about.

10 Q And you would agree, wouldn't you, that the 8.57 acres  
11 had a price on it of \$1,116,000 and change for 8.57  
12 acres? Is that correct?

13 A TPL always viewed this as a 50-acre project.

14 Q But nothing in the P&S agreement gave a 50-acre  
15 project to Mosaic Commons or Co-housing. Isn't that  
16 correct?

17 MS. FETOUH: Objection.  
18 MS. ECKER: Objection.  
19 MR. CONROY: Objection.

20 A Well, I think there's a legal question out there,  
21 whether or not the allocation, 8.57 versus 50,  
22 survives the assignment in the exact same form it  
23 existed prior to.

24 Q So, you're disagreeing with the allocation of the

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1 purchase price that is outlined in the terms of the  
2 purchase and sale agreement, which specifically states  
3 that Co-housing was to get 8.57 acres and the town, by  
4 way of gift, would get the remaining portion, and your  
5 testimony now is that you did not agree with that  
6 allocation. Is that your testimony?

7 MS. FETOUH: Objection.

8 MS. ECKER: Objection.

9 MR. CONROY: Objection.

10 A No.

11 Q Is it your testimony that you always viewed it as, TPL  
12 always viewed it as, a 50-acre project and, therefore,  
13 you do not agree with the allocation as to the  
14 \$1,116,900 that was applicable to the 8.57 acres?

15 MS. FETOUH: Objection.

16 MS. ECKER: Objection.

17 MR. CONROY: Objection.

18 A I'm saying something less than what you would like me  
19 to say.

20 Q Do you recall telling people that Mosaic Commons  
21 overpaid for the property?

22 A Yes.

23 Q And that's because you believed that it wasn't a good  
24 deal for Mosaic Commons but it was a good deal for

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1 Mrs. Kunelius. Isn't that correct?

2 A I have no idea whether it was a good deal for Mosaic  
3 Commons.

4 Q Well, if Mosaic Commons overpays for the property,  
5 it's probably not a good thing for Mosaic Commons, is  
6 it?

7 MS. FETOUH: Objection.

8 A I would say that Mosaic Commons paid more than fair  
9 market value, but it may be a good deal for them  
10 because they have the power of 40B.

11 Q And it was certainly a good deal for Mrs. Kunelius if  
12 you believe she got better than market value. Is that  
13 correct?

14 MS. FETOUH: Objection.

15 A I would agree with that.

16 Q So, a component of your refusal, TPL's refusal, as  
17 reflected by your letter of September 9th, was that  
18 you did not believe you could borrow an amount of  
19 money that would not exceed the value of the 8.57 acre  
20 parcel. Am I correct on that?

21 A If you're asking me to explain what the third  
22 paragraph of Exhibit 13 is, it's my testimony that I  
23 don't recall the number of dollars that I was  
24 referring to, as I sit here today, in that letter that

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1 I wrote four years ago.

2 Q Well, maybe you can explain this to me, sir. You say,  
3 I mean, there has to be some amount of money that  
4 would be applicable to the loan that you're talking  
5 about bridging, and by any stretch of the imagination,  
6 it's hard for me to consider it being more than  
7 \$800,000, meaning, subtract the 400,000, 300- and  
8 100,000 from the purchase price that you knew you were  
9 going to get, eventually, from the town. You're left  
10 with approximately \$800,000. Now, if that's the case,  
11 doesn't this say that any bridge loan would be for an  
12 amount greater than the land would be worth even if a  
13 subdivision were approved, which means you did not  
14 like the value of the deal and you wouldn't borrow  
15 even \$800,000 because you did not think that the land  
16 would be worth even \$800,000?

17 MR. CONROY: Objection.

18 MS. ECKER: Objection.

19 MS. FETOUH: Objection.

20 A That's not really what I'm saying. I cannot  
21 characterize any further what I believe, as I sit here  
22 today, this sentence means.

23 Q Well, what did you expect Peter Kachajian to think  
24 when he read this if you don't understand?

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1 A Well, if it was September 9, 2003, I could tell you  
2 what I meant, but it's four years later.

3 Q Let's go forward to the next sentence, which says:  
4 Essentially, this would be asking TPL for an unsecured  
5 loan based on weak fund-raising prospects with no  
6 backup plan to repay the loan.

7 Tell me, if you would, who was asking TPL  
8 for an unsecured loan? Was anybody asking TPL  
9 for an unsecured loan?

10 A What that sentence referred to was the notion that  
11 borrowing against an uncertain fund-raising future  
12 was, on the basis of a line of credit, was unwise if  
13 TPL did not believe that the fund-raising prospects  
14 would materialize.

15 Q So, you were concerned -- well, this says this would  
16 be asking TPL for an unsecured loan. Who was asking  
17 TPL? I just don't understand.

18 A It's a hypothetical notion that it would be imprudent  
19 for TPL to invest money in this project without a  
20 reasonable expectation of capital takeout, whether  
21 that be the sale of assets or private fund-raising.

22 Q I'm going to put before you a document that is  
23 attached to the complaint as Exhibit 9. We'll re-mark  
24 it as Exhibit 21 to the complaint.

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**DEPOSITION OF CRAIG MACDONNELL****MINI-DEP. by Kenson**

1 (WHEREUPON, Exhibit No. 21, Pelletier  
2 letter to Stow Board of Appeals, dated September  
3 25, 2003, marked for identification.)  
4 MR. McLAUGHLIN: I don't know what you  
5 want to do. I've still got a substantial amount  
6 here, so we'll keep plugging along here as long  
7 as we can.  
8 Q Exhibit 21 appears to be a letter from regional  
9 counsel, Denise Pelletier, to the chairman of the Stow  
10 Board of Appeals on September 25th, in which you're  
11 asking for variances to be dropped, I should say, to  
12 drop your application for variances, and, this, some  
13 almost three weeks after your letter to Mr. Kachajian.  
14 During the time that you were applying for  
15 these variances, particularly, in September, I  
16 thought you already said that if it was  
17 September, the deal was done. It was over. You  
18 were looking at some new deal. Am I correct in  
19 my characterization of your testimony?  
20 A As I've testified earlier, TPL's confidence level in  
21 this project waned gradually over a period of time.  
22 There was no decision point, so that over the summer  
23 of 2003, it became increasingly untenable that this  
24 project could go forward. There was a moment in time

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1 when it became particularly problematic, and I think  
2 that moment probably was when we determined that the  
3 subdivision was hugely problematic, and you recall  
4 earlier today we talked about sort of the early  
5 analysis of when we were trying to just, as lawyers,  
6 figure out the best route to subdivide the property,  
7 and then I said later on another problem arose that  
8 was even more problematic.  
9 What happened in the summer -- let me just  
10 finish the thought. In the summer, we learned  
11 something that we hadn't known before, which was  
12 that the two parcels, 142 and 144, were not owned  
13 by separate entities. It was our understanding  
14 before that time that they were owned by separate  
15 entities and that the common law doctrine of  
16 merger would not apply, and so that so long as we  
17 could get the variances that we were seeking, the  
18 future existence of 142 and 144 could be created  
19 for purposes of sale. Somewhere along the path,  
20 it became apparent to us that, in fact, 142 and  
21 144 were owned by the same entity, the doctrine  
22 of merger applied, and there was no way to  
23 subdivide it.  
24 Q There was no way to subdivide based upon your plan for

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1 the property rather than the plan for Co-housing and  
2 Mosaic Commons, correct?  
3 A The proposal for what we intended to do, the variances  
4 we sought, would be rejected. So, it was important  
5 for us not to have that rejection made. In effect, we  
6 were thinking of Mrs. Kunelius' property rights at  
7 this point in time and didn't want an adverse variance  
8 decision on the record, not only for Mrs. Kunelius'  
9 sake but also for the possibility of the future in  
10 which the town, TPL, everybody else, could reconfigure  
11 this project and make it go forward.  
12 Q Are you familiar with how much cash on hand TPL  
13 Massachusetts has at any particular point in time?  
14 A No.  
15 Q Do you have even a general sense of how much cash on  
16 hand TPL has right now?  
17 A TPL, nationally?  
18 Q No, Massachusetts.  
19 A I do not know.  
20 Q Could you tell me within a half a million dollars?  
21 A No.  
22 Q As the director of the Massachusetts division of TPL,  
23 you do not know how much money is in your checking  
24 account, approximately?

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1 A In any given moment, no, because a lot of money goes  
2 in and out to do projects all the time.  
3 Q I understand. But within general terms, do you carry  
4 a balance in your checking account of a half a million  
5 dollars?  
6 A I just told you that I don't know what the balance is,  
7 and I don't know what it normally is. It fluctuates  
8 hugely.  
9 Q So, do you have any idea of what amounts TPL has in  
10 other assets, liquid assets, nationally?  
11 A I do not.  
12 Q Have you ever looked at TPL's financial statements to  
13 determine how much money they have in their accounts?  
14 A Not closely.  
15 Q But you've looked?  
16 A I mean, I've seen the balance sheet.  
17 Q Have you ever considered or did you consider using any  
18 of TPL's assets beyond the line of credit in order to  
19 fund the purchase from Mrs. Kunelius?  
20 A No.  
21 Q Did you ask anybody if there were funds available that  
22 could be used? I'm talking about liquid assets, such  
23 as cash or certificates of deposit or any other types  
24 of assets, which could be liquidated within some

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1 reasonable period of time in order to effectuate the  
2 purchase.  
3 A I don't recall.  
4 Q Is it your testimony today that you do not know  
5 whether TPL, nationally, has \$800,000 in cash or  
6 liquid assets available to it, or had \$800,000 in cash  
7 or liquid assets available to it, that it could have  
8 used at the time that TPL was required to purchase the  
9 property from Mrs. Kunelius?  
10 A That's not my testimony.  
11 Q So, is it possible that TPL did have cash or liquid  
12 assets sufficient to make the purchase from  
13 Mrs. Kunelius?  
14 A I just don't know what the state of TPL's liquid  
15 assets were in that period of time.  
16 Q Do you have to submit a budget in your role as a  
17 director of Massachusetts?  
18 A Yes.  
19 Q And with that budget, do you consider sources and uses  
20 of funds on a daily, weekly, monthly, yearly basis?  
21 A Quarterly.  
22 Q Quarterly. And when was the last time you did that?  
23 Would it be December 31?  
24 A TPL's fiscal year ends at the end of March. So, we

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1 are coming up on the end of our fiscal year.  
2 Q So, you're actually considering a budget right now for  
3 next year, are you not?  
4 A Yes.  
5 Q Is it your testimony today that in establishing that  
6 budget, as you are apparently doing currently, you  
7 have no idea of how much money is in the cash  
8 reserves, the bank accounts, the checking accounts,  
9 the savings accounts, of TPL for Massachusetts?  
10 A TPL begins every year at zero and ends, hopefully,  
11 every year at zero. We don't have an endowment. This  
12 is not an organization that has cash sitting around  
13 ready to throw at projects. This is a very squeaky  
14 organization when it comes to spending money. We're a  
15 conservation organization. We just don't have that  
16 much. So, in the budgeting process, we think very  
17 carefully about anticipated revenue, anticipated  
18 expenses, going forward.  
19 Q When your line of credit was obtained for six million  
20 dollars, what did TPL give as collateral for that, if  
21 you know?  
22 A I don't know.  
23 Q Is it an unsecured line of credit?  
24 A It very well may be.

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**DEPOSITION OF CRAIG MACDONNELL****MINI DEP by Kenson**

1 Q Would that suggest to you that Wainwright Bank has  
2 some confidence in the ability to be repaid on a six  
3 million dollar line of credit?  
4 MS. FETOUH: Objection.  
5 A I don't know what Wainwright is thinking.  
6 (WHEREUPON, Exhibit No. 22, MacDonnell  
7 letter to Kachajian, dated July 6, 2004, marked  
8 for identification.)  
9 Q I want to have you look at the next exhibit.  
10 THE WITNESS: Before you ask that  
11 question, could I take a two-minute break?  
12 MR. McLAUGHLIN: Sure.  
13 (Recess, 5:24 P.M.)  
14 (After recess, 5:29 P.M.)  
15 (All parties present)  
16 By MR. McLAUGHLIN:  
17 Q Exhibit 22, this is also attached to the complaint as  
18 Exhibit 11 to the complaint, and it is a July 6, 2004,  
19 letter from you, sir.  
20 MR. KACHAJIAN: Is that to me?  
21 MR. McLAUGHLIN: To Peter Kachajian,  
22 yes, see you later.  
23 (Mr. Kachajian exits the room.)  
24 Q With attachments. And the attachments have an A and a  
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1 B on them, and I'm wondering first, sir, whether you  
2 recall this letter.  
3 A I do.  
4 Q And you authored this letter?  
5 A I did.  
6 Q And did you assemble Exhibit A and Exhibit B to this?  
7 A Did I attach them?  
8 Q No, did you assemble the information in Exhibit A and  
9 Exhibit B? Is that your work product or is that  
10 someone else's work?  
11 A It's like a little software program that generates  
12 these tax benefit analyses. It's not entirely my work  
13 product. It's relying on the built-in analysis.  
14 Q Now, is it fair to say that -- well, let's look at the  
15 second page of your letter, beginning with the first  
16 paragraph, third line. It says: The first such  
17 proposal contemplated a partnership with the town and  
18 Mrs. Kunelius whereby TPL would pay her eight hundred  
19 thousand for the property. The town would invest  
20 three hundred thousand.  
21 So, does that mean that Mrs. Kunelius gets a  
22 million-one, or does that mean that Mrs. Kunelius  
23 gets eight hundred thousand and the town then  
24 pays back TPL three hundred thousand so that TPL  
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1 is paying five hundred thousand?  
2 A It imagined paying \$800,000 for the property.  
3 Q And the town's investment was a repay to TPL of three  
4 hundred thousand, is that correct?  
5 A Well, in exchange for the three hundred thousand which  
6 had previously been approved, the CPC money, the town  
7 would receive the conservation parcel.  
8 Q So, this first paragraph is an offer of eight hundred  
9 thousand to Mrs. Kunelius. Down at the bottom of the  
10 page, in the middle of the page, third paragraph, it  
11 says: It's my understanding that the purchase price  
12 could be improved to nine hundred thousand. Do you  
13 see that?  
14 A Yes, I do.  
15 Q So, in order for you to move forward, meaning TPL,  
16 your letter indicates that Mrs. Kunelius was going to  
17 have to accept one of these two offers in order for  
18 TPL to move forward with it. Is that a fair  
19 description of the purpose of the letter?  
20 A The purpose of the letter was to advise Mr. Kachajian  
21 that TPL continued to have an interest in this  
22 conservation project, that it wanted to continue to  
23 work hard to bring as much money as possible to  
24 Mrs. Kunelius, and that the hope was to be able  
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1 to bring in the neighborhood of eight or nine  
2 hundred thousand dollars to her.  
3 Q Where was the \$500,000 coming from that resulted from  
4 the \$800,000 minus the payback of three hundred to  
5 TPL? That meant that TPL had to come up five hundred.  
6 Where were you proposing that \$500,000 come from?  
7 A We would hope to sell the two lots, 142 and 144.  
8 Q And that was it, no money from TPL in this deal  
9 whatsoever. It was the sale of the lots from  
10 Mrs. Kunelius' property and the money from the  
11 town of \$300,000 and nothing from TPL. Is that  
12 correct?  
13 A In this proposal, in the first paragraph, on Page 2, I  
14 believe the two lots plus three hundred would come up  
15 to eight hundred.  
16 Q So, in other words, TPL was going to put nothing in it  
17 themselves?  
18 MS. FETOUH: Objection.  
19 Q For the purchase price.  
20 A It was never contemplated for TPL to put its own money  
21 in the deal.  
22 Q Well, it's either its money or capital market money or  
23 the line of credit. I'm counting that as TPL's money  
24 for the purposes of my question, but let me just move  
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1 on. Let me just move on. You don't have to answer  
2 that.  
3 MR. CONROY: I'll make it clear that  
4 he's not answering the question.  
5 MR. McLAUGHLIN: All right.  
6 (WHEREUPON, Exhibit No. 23, MacDonnell  
7 letter to Perry, dated January 5, 2003, marked  
8 for identification.)  
9 Q Is it fair to say that in the eight hundred thousand  
10 dollar offer, none of the \$800,000 came from TPL's own  
11 funds, that is, their own assets, cash or the sale of  
12 stock or anything else?  
13 A Well, this was a proposal, and because it was still in  
14 the proposal stage, it's not clear to me whether the  
15 five hundred that would come from the sale of the two  
16 lots would be fronted by TPL and then recovered from  
17 the sale or whether the sale of the two lots would  
18 have to precede it.  
19 Q And where would the money come from if it was fronted  
20 by TPL? That's my question.  
21 A That was not proposed.  
22 Q Well, you could borrow it. Isn't that fair to say?  
23 A TPL could borrow that money. Correct, we could borrow  
24 that money.  
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1 Q Fine.  
2 A If there was a reasonable likelihood of return to pay  
3 back the loan, the same issue we've talked about all  
4 day.  
5 Q So, that offer wasn't an offer, because you didn't  
6 know if you could sell the units, the two units. So,  
7 it was contingent upon whether there was a likelihood  
8 of selling the two units, correct?  
9 MS. FETOUH: Objection.  
10 MR. CONROY: Objection.  
11 A No, that's not what I just said.  
12 Q So, let me make sure I understand. You could borrow  
13 money providing there was an assurance that you could  
14 pay it back. Is that fair to say?  
15 A Like any business.  
16 Q And the only source of being assured of paying back  
17 the money was the sale of the two units. Is that  
18 correct?  
19 A No.  
20 Q So, then there was another source, and that was what?  
21 A Private fund-raising, if the private fund-raising was  
22 substantiated. Is it likely to come forward?  
23 Q So, this wasn't an offer. It was a proposal for which  
24 you were not certain that you could perform under that  
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## DEPOSITION OF CRAIG MACDONNELL

MINIDEP by Kenson

1 proposal because you didn't know the likelihood of  
2 fund-raising. Is that fair to say?  
3 MS. FETOUH: Objection.  
4 A No. No, not at all. This letter talks about a  
5 proposal that was previously on the table. This  
6 letter, the purpose of this letter, is to talk about  
7 the next proposal, a better proposal.  
8 Q And that's the nine hundred thousand dollar proposal?  
9 A Right.  
10 Q All right. Let me simply ask you a few questions  
11 concerning the complaint and your understanding of  
12 your relationship with the town.  
13 I presume as an attorney that, when you went  
14 to law school, you studied partnership law. Is  
15 that fair to say?  
16 A Well, I'm trying to remember whether I took that  
17 course.  
18 Q Well, Cornell most certainly teaches that course.  
19 MS. FETOUH: Objection.  
20 Q Well, she doesn't think Cornell does, but --  
21 MS. FETOUH: No, I went to a comparable  
22 school. We didn't learn that.  
23 MR. McLAUGHLIN: There's nothing  
24 comparable to Cornell.

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1 Q You don't have to answer that question. You're aware,  
2 are you not, that Mrs. Kunelius has alleged that there  
3 was a joint venture, or a partnership, between TPL and  
4 the town. Is that fair to say?  
5 A I've seen the word -- that there's the allegation?  
6 Q Yes.  
7 A I've seen the word partnership in the complaint.  
8 Q And you are aware, are you not, that TPL has denied  
9 that there is a partnership?  
10 A I am aware of that.  
11 Q And you are aware, also, that you denied there was a  
12 partnership.  
13 A I am aware of that.  
14 Q Okay. Let's look at the January 5th letter from you  
15 to the town, to Ross Perry of the Board of Selectmen,  
16 and I would ask you to look at the fifth line up from  
17 the bottom. On the right-hand side, it says: All our  
18 projects are done at the request of and in partnership  
19 with entities that become permanent owners of the  
20 property. The two most important roles we play in  
21 this process are, one, we make sure that our  
22 obligations to our partners are met and, two, to raise  
23 funds necessary for the transaction from a combination  
24 of private and public sources.

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1 Now, when you used the word partnership on  
2 the first page of your January 5th letter, which  
3 is Exhibit 25, were you referring to a  
4 partnership with the town?  
5 A I was using the term in its colloquial sense and not  
6 in its formal legal sense.  
7 Q There is a colloquial sense to partnership? And that  
8 would be what?  
9 A Working together on something less than a legal  
10 partnership.  
11 Q Well, is it fair to say that, in a partnership, would  
12 you expect the individuals or parties to a partnership  
13 to have a financial stake in a partnership?  
14 MS. FETOUH: Objection.  
15 MR. CONROY: Objection.  
16 Q An investment, something that --  
17 A A legal partnership, you're talking about?  
18 Q Yes.  
19 A Not always.  
20 Q Doesn't have to have one?  
21 A Correct.  
22 Q Would you expect that there would be some contractual  
23 stake in a partnership where the parties enter into a  
24 written agreement by which they declare their partner

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1 status to each other?  
2 A Sometimes but not always.  
3 Q Well, let me just ask you to look at your letter of  
4 January 5th to the town, and the second full paragraph  
5 says: For TPL to consider a financial and contractual  
6 stake in this project, we would need to secure our  
7 involvement in a way that will enhance the likelihood  
8 of sufficient public and private funds being available  
9 and ensures a strong conservation and community  
10 outcome.  
11 Now, this says, as I understand it, that TPL  
12 intended to have a financial stake in the  
13 project. Am I wrong in my reading of that, sir?  
14 A No.  
15 Q So, what was the financial stake of TPL in the project  
16 when the project was for the acquisition of a  
17 1,116,900 dollar piece of property? What was your  
18 financial stake, TPL's?  
19 A Well, it would be the out-of-pocket dollars that we  
20 spent in pursuit of the deal, together with the value  
21 of the services that we provided through our staff  
22 that would otherwise be working on some other project.  
23 Q Well, now, from a matter of your standing as a non-  
24 profit tax-exempt entity, do you bill services of your

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1 staff on an hourly rate in order to establish a  
2 financial investment in a particular project?  
3 A We analyze the time commitments of our staff on the  
4 basis of dollars every year, every project, all the  
5 time.  
6 Q What was the contractual stake that you were entering  
7 into as a partner with the town that you're referring  
8 to here?  
9 A It makes reference to a contractual stake in the  
10 project that I think we were contemplating. This is  
11 before the assignment?  
12 Q Yeah.  
13 A We're talking about stepping into the shoes of Co-  
14 housing Resources.  
15 Q So, it was a financial stake with the town and a  
16 contractual stake with who, Mrs. Kunelius?  
17 MS. FETOUH: Objection.  
18 MS. ECKER: Objection.  
19 A Well, there is a contract that we've spent a lot of  
20 time talking about that TPL became the assignee of.  
21 So, in effect, yes, that contract is the contract  
22 we're talking about.  
23 Q Looking at the very last sentence of this exhibit, it  
24 states: If so, we ask that you authorize your

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1 chairman to sign below as an indication of your  
2 partnership with TPL. Do you see that?  
3 A I do.  
4 Q Now, you have alleged, or you have denied, the  
5 existence of any partnership between yourself and the  
6 Town of Stow, is that correct?  
7 A Yes.  
8 Q Not yourself but TPL. Is that correct?  
9 A It's my understanding that TPL has denied the  
10 existence of a partnership and that, individually, I  
11 have denied that TPL and the town had a partnership.  
12 Q And you continue to deny that notwithstanding the fact  
13 that there is a written document that evidences their  
14 indication of joining the partnership and that there's  
15 a written document indicating what the cost of joining  
16 the partnership would be.  
17 MR. CONROY: Objection.  
18 MS. FETOUH: Objection.  
19 MS. ECKER: Objection.  
20 Q That means the Town of Stow.  
21 MS. FETOUH: Objection.  
22 MS. ECKER: Objection.  
23 Q Is that fair to say? Well, go head.  
24 A Do you want to keep asking something?

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**DEPOSITION OF CRAIG MACDONNELL****MINIDEP by Kenson**

1 Q No, go head. Is that fair to say?  
 2 A It is fair to say that the partnership we're referring  
 3 to in Exhibit 23 is not a legal partnership but just a  
 4 colloquial level of cooperation that doesn't rise to  
 5 the level of a legal partnership.  
 6 Q Now, do you think a legal partnership has to be in  
 7 writing, sir?  
 8 MS. FETOUH: Objection.  
 9 MR. CONROY: Objection.  
 10 A I don't have thoughts about that.  
 11 Q Well, you're aware that two people can have a joint  
 12 venture which is called a general partnership in which  
 13 they both work for some single purpose, such as two  
 14 lawyers joining together for a law firm. There's no  
 15 requirement of a written document in that instance, is  
 16 there?  
 17 MS. FETOUH: Objection.  
 18 MR. CONROY: Objection.  
 19 A I don't know that to be true. My understanding is  
 20 that the relationship that TPL had with the Town of  
 21 Stow is not that kind of partnership.  
 22 Q How many kinds of partnerships are there that you're  
 23 aware of?  
 24 MS. FETOUH: Objection.  
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**CERTIFICATE**  
**COMMONWEALTH OF MASSACHUSETTS**  
**COUNTY OF ESSEX, ss.**

I, Roberta J. Daniels, a Court Reporter and Notary Public within and for the Commonwealth of Massachusetts, do hereby certify that the foregoing deposition of CRAIG MacDONNELL was taken before me on February 8, 2007, that the said witness was satisfactorily identified and duly sworn before the commencement of his testimony and that the testimony was taken audiographically by myself and then transcribed by myself. To the best of my knowledge, skill and ability, the within transcript is a complete, true and accurate record of said deposition.

Further, I am not connected either by blood or by marriage with any of the said parties nor am I interested either directly or indirectly in the matter in controversy.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this 20th day of February, 2007.

Roberta J. Daniels, Notary Public  
 Commission expires: 11-15-13  
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1 MR. CONROY: Objection.  
 2 A Well, there is this kind, this informal collaboration,  
 3 lower case P, non-legal, and then there are legal  
 4 partnerships, sort of the formal partnership that the  
 5 law firms that I was a part of and you may have been a  
 6 part of, and that these folks are part of, that  
 7 constitute a partnership.  
 8 Q Have you ever heard of the concept of partnership  
 9 estoppel?  
 10 A No.  
 11 MR. McLAUGHLIN: Almost done. I think  
 12 we're there.  
 13 Q I want you to just look at Exhibit 8 for a moment.  
 14 Exhibit 8 is the Stow Community Preservation Committee  
 15 minutes of February 10th. On the third page, which is  
 16 040, now, this is on February 10th, third paragraph  
 17 down: A committee member asked Bob Wilbur about his  
 18 conversation with Marilyn Kunelius. Bob said that she  
 19 is afraid the contract may unravel with the town  
 20 intervention and she will lose everything. Bob said  
 21 TPL will not back down from a commitment.  
 22 Now, you were present at that meeting, so  
 23 isn't it fair to say that you were aware that  
 24 Mrs. Kunelius was afraid that she would lose  
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**CERTIFICATE**  
 I, CRAIG MacDONNELL, do hereby certify that I have read the foregoing transcript of my testimony and further certify that said transcript is a true, accurate and complete record of said testimony.  
 Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
 under the pains and penalties of perjury.

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1 everything as a result of the intervention of the  
 2 town and subsequent transfer of the right to TPL?  
 3 MR. CONROY: Objection.  
 4 A My memory of Mrs. Kunelius' situation is that this was  
 5 an important asset for her. I don't have a  
 6 recollection of this item being discussed at this  
 7 meeting.  
 8 Q It goes on to say: Tom Marr spoke from the audience  
 9 and said, "This is not the babe we want to fool around  
 10 with and 1.2 is not the figure." Do you know what  
 11 that's about, and do you know who he's talking about?  
 12 Is Mrs. Kunelius the babe they were talking about?  
 13 A I can honestly say I have no idea what that refers to.  
 14 Q You can honestly say you have no idea. Was there some  
 15 other individual that was a babe that had a connection  
 16 with the 1.2 million dollar number?  
 17 MS. FETOUH: Objection.  
 18 MR. CONROY: Objection.  
 19 A I don't know what this is about.  
 20 MR. McLAUGHLIN: Okay. I think that's  
 21 it. Thank you.  
 22 (WHEREUPON, the deposition concluded at  
 23 5:52 P.M.)  
 24  
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**DEPOSITION OF CRAIG MACDONNELL**

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Conserving Land  
for People

April 1, 2003

David Lawson, Program Coordinator  
Housing Development Support Program  
Massachusetts Department of Housing and Community Development  
One Congress Street  
Boston, MA 02114

RE: 4/1/03 Application by Stow, MA for Housing Development Support

Dear Mr. Lawson:

Please be advised that the Trust for Public Land, in cooperation with the Town of Stow, intends to purchase the property located at 142-144 Red Acre Road in Stow, Massachusetts for the purposes of (1) renovating the single-family house located at 142 Red Acre Road and selling it subject to an affordable housing covenant; (2) selling 144 Red Acre Road to an equine rehabilitation nonprofit corporation known as Eye of the Storm Equine Rescue, Inc.; and (3) conveying 45 acres to the Town for conservation and municipal water supply. In this regard, as is our normal course, TPL will engage in a public and private fundraising effort, which will include seeking funds from the Community Preservation Fund in Stow and from private sources. In order to complete this transaction, TPL may need to pursue private capital of its own, as we do in many of our transactions. Our private capital needs are met in a variety of ways, including foundations, private donations, and market funds. TPL currently has lines of credit across the country in excess of 70 million dollars. A local lending institution, Wainwright Bank, has issued us a line of credit in the amount of six million dollars, which funds we could utilize if necessary to complete the Stow transaction, subject to normal due diligence and internal TPL review. For your further information, I have attached our Annual Report, which provides additional financial information about the Trust for Public Land, and a copy of a letter from Wainwright Bank renewing our line of credit.

Sincerely,

Craig A. MacDonnell  
Massachusetts State Director

The Trust for Public Land  
New England Regional Office  
33 Union Street, Fourth Floor  
Boston, MA 02108

(617) 367-6200

Connecticut Field Office  
383 Orange Street  
New Haven, CT 06511

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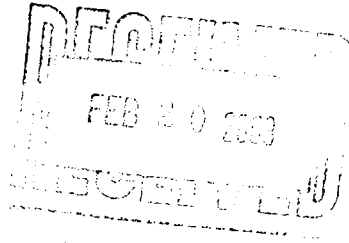
63 Franklin Street, Boston, Massachusetts 02110-1301 • Telephone 617-478-4000 • Toll Free 800-

Nora Bloch

Assistant Vice President

February 19, 2003

Mr. Holden Lee  
The Trust for Public Land  
116 New Montgomery  
Fourth Floor  
San Francisco, CA 94105



Dear Holden:

I am pleased to inform you that the \$6,000,000 Line of Credit extended to the Trust for Public Land has been renewed for one year and will mature on February 14, 2004. In addition, a new interest rate was approved at Wall Street Journal Prime minus 0.25%.

Therefore, pursuant to the Revolving Credit Agreement dated February 14, 1996 ("the Agreement") between Wainwright Bank & Trust ("The Bank") and the Trust for Public Land, this letter is official notification that "Floating Rate" as defined in Section 1 of Article 1 is hereby amended to state: "means a rate per annum equal to 0.25% less than the prime rate as reported in the "Money Rates" section of *The Wall Street Journal*, changing when and as the prime rate changes."

Please feel free to contact me at (617) 478-4000 regarding this or any other matter.

Regards,

Nora Bloch  
Assistant Vice President

Cc: Jonathan Klein, Esq.  
Steve Irza

March 5, 2007

**BY FACSIMILE AND FIRST-CLASS MAIL**

Michael C. McLaughlin, Esq.  
Law Offices of Michael C. McLaughlin  
One Beacon Street, 33<sup>rd</sup> Floor  
Boston, MA 02108

RE: Marilyn Kunelius v. Town of Stow, Partnership of an Unknown Name between Town of Stow and the Trust for Public Land, The Trust for Public Land and Craig A. MacDonnell  
Civil Action No.: 05-11697

Dear Mr. McLaughlin:

The following outlines the response of defendant The Trust for Public Land ("TPL") to Plaintiff's Notice of Rule 30(b)(6) Deposition of Defendant The Trust For Public Land ("30(b)(6) Notice"). The numbers below correspond to the numbered "Subject Matters" listed in Schedule A to the 30(b)(6) Notice.

Topics 1, 4, 5, 8, 11, and 12

The topics listed above concern activities related to the proposed purchase of Ms. Kunelius' property. At the deposition of Craig A. MacDonnell, the Massachusetts State Director of TPL, which was taken over the course of a full day on February 8, 2007, you inquired into each of these topics. Pursuant to our discussion at the conclusion of Mr. Perry's deposition on February 26, 2007, TPL hereby notices its intent to adopt Mr. MacDonnell's testimony concerning these project-specific topics as its own. Accordingly, TPL will not produce another witness on these topics.

Topics 2 and 3

TPL objects to the production of a witness to testify on the subject matters listed in Topics 2 and 3 because they are wholly irrelevant to the current dispute. For the reasons articulated in TPL's Motion to Quash Plaintiff's Subpoena and Notice of Deposition to the Keeper of the Records of Wainwright Bank ("Motion to Quash"), TPL believes these topics cover subject matter that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence regarding the claims and defenses in this dispute. As we stated in the Motion to Quash, details concerning TPL's liquid assets and lines of credit are irrelevant to the question of liability or the damages to which Ms. Kunelius may be entitled. TPL has never argued that TPL could not have

Michael C. McLaughlin, Esq.  
March 5, 2007  
Page 2

resorted to its own funds or available resources to complete the purchase of Ms. Kunelius' property. Rather, TPL made the decision not to resort to them where there was no prospect of completing TPL's mission by raising sufficient funds to recover TPL's investment and transfer the property to a long-term steward. Furthermore, you already appear to have possession of TPL's publicly-available annual reports, which contain financial information. To the extent you require copies of those publicly-available documents, we will provide a copy of the annual report for 2003.

In addition to the irrelevance of Topics 2 and 3, they are overbroad, seeking extensive categories of information concerning TPL's "bookkeeping, applications, withdrawal histories, repayment histories, notices of default, and disbursement schedules" for all of TPL's lines of credit over a five-year period. Even assuming TPL could produce a witness with knowledge on the wide-ranging details you seek, you have demonstrated no need for such far-reaching information.

Accordingly, TPL will not produce a witness on these topics. Assuming we cannot reach an agreement concerning Topics 2 and 3, TPL will seek a protective order to prohibit testimony into these areas.

Topics 6, 7, 9, and 10

Because these topics include subject areas that are not project-specific and were not covered fully in Mr. MacDonnell's deposition, TPL will produce a witness to testify on Topics 6, 7, 9, and 10.

We are available for this deposition on March 22, 2007, one of the dates we were given for your availability.

Thank you.

Very truly yours,



Dahlia S. Fetouh

DSF/baf

cc: James B. Conroy, Esq.  
Deborah I. Ecker, Esq.



Exhibit F

Volume: I  
Pages: 1-279  
Exhibits: 20

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 05-11697-GAO

MARILYN KUNELIUS,  
Plaintiff,

v.

TOWN OF STOW, separately,  
A PARTNERSHIP OF UNKNOWN NAME  
BETWEEN TOWN OF STOW and THE  
TRUST FOR PUBLIC LAND, THE TRUST  
FOR PUBLIC LAND, separately,  
and CRAIG A. MacDONNELL, in  
his individual capacity,  
Defendants.

DEPOSITION of EDWARD R. PERRY, JR., a  
witness called by and on behalf of the Plaintiff,  
taken pursuant to Fed.R.Civ.P. 30, before Roberta  
J. Daniels, a Court Reporter and Notary Public  
within and for the Commonwealth of Massachusetts,  
at the Law Offices of Michael C. McLaughlin, One  
Beacon Street, Boston, Massachusetts 02108, on  
Monday, February 26, 2007, scheduled to commence  
at 10:00 A.M.

A P P E A R A N C E S

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Counsel for Craig MacDonnell

Also present:  
Lucie DeBellis, Paralegal  
Law Offices of Michael C. McLaughlin

Marilyn Kunelius, Plaintiff  
David Norris, Husband of the plaintiff

Craig A. MacDonnell, Defendant

Exhibit F

3

I N D E X

<u>Witness</u>	<u>D</u>	<u>C</u>	<u>RD</u>	<u>RC</u>
EDWARD R. PERRY, JR.				
By Mr. McLaughlin	5		266	
By Mr. Conroy		264		

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P R O C E E D I N G S

Monday, February 26, 2007

10:08 A.M.

[EXCERPT]

(Begins on Page 258, Line 6, of original transcript and ends on Page 264.)

Q Are you aware of any heated discussions or did you attend any heated discussions between Friends of Red Acre and Craig MacDonnell?

A I'm aware of the one that you related to me a little while ago. I did not attend any conversations or I don't remember any meetings where there was a heated conversation.

Q Other than the one that I referred to where Mr. MacDonnell lost his temper, are you aware of any discussions in which Mr. MacDonnell went to the Friends of Red Acre and instructed them in the summer of 2003 not to raise any funds?

A No, I'm not aware of that.

Q Is today the first time that you have ever heard of even a suggestion that Craig MacDonnell had instructed the Friends of Red Acre not to raise anymore money?

MR. CONROY: Objection.

1 A There may have been a comment by Peter Christianson or  
2 Dave Cobb to that extent, but what I remember from  
3 that is Craig saying that they didn't raise the money  
4 and them saying they could have and did raise the  
5 money. So, if you're suggesting that Craig told them  
6 not to raise money --

7 Q Correct.

8 A -- that doesn't sound right.

9 Q So, as far as you're concerned, that seems illogical.  
10 Is that fair to say?

11 A Yes.

12 Q Looking at Exhibit 20, on the front page of Exhibit  
13 20, the front page appears to be a Friends of Red Acre  
14 letter dated June 6<sup>th</sup>, and I'm almost done here, and I  
15 would ask you to look at the last paragraph in which  
16 it says: With your help, this citizens group has been  
17 able to partner with the town to form an unprecedented  
18 coalition of organizations, including TPL, Stow  
19 Conservation Trust, Eye of the Storm and others, and  
20 we are well on our way to raising the necessary funds.  
21 Thank you for working with us and allowing the voters  
22 to speak on this conservation alternative.

23 Did you have any understanding as to how  
24 much money the Friends of Red Acre had raised?

1 A Tens of thousands.

2 Q Well, when they said they were well on their way to  
3 raising the necessary funds, how much money did you  
4 expect that they were going to have to raise?

5 A Still tens of thousands. They were looking for money,  
6 you know, from the Eye of the Storm and others.

7 Q In the application for the funds from the state, you  
8 broke down how much money was going to have to be  
9 raised by private fund-raising, and that was \$200,000.

10 A I think private fund-raising is bigger than the  
11 Friends for Red Acre Road, so.

12 Q Okay.

13 A I thought what you asked me is how much did I think  
14 the Friends for Red Acre Road were going to raise.

15 Q That's right.

16 A And I thought, in terms of tens of thousands, I mean,  
17 these are private citizens who were going to put some  
18 of their own money up front. From other foundations,  
19 they presumably had more money.

20 Q Of the \$200,000 that you informed the state was going  
21 to be raised by fund-raising, what percentage of that  
22 was going to come from capital market, the capital  
23 market, the market capital that TPL was going to bring  
24 to the table, if you know?

1 A I don't know.

2 Q And so you never actually saw a budget of Friends of  
3 Red Acre as to what their actual obligations were in  
4 order to go forward with the deal. Is that fair to  
5 say? You didn't know if it was fifty thousand or a  
6 hundred thousand or ten thousand.

7 A No, I believe there were spreadsheets where they had  
8 identified funding sources.

9 Q And was that part of some establishment of a budget by  
10 TPL and the town in figuring out whether this was  
11 going to be do-able?

12 A It was not a budget between TPL and the town. It was  
13 my understanding it was a budget between TPL and the  
14 Friends for Red Acre.

15 Q Okay. Last series of questions. Did you become aware  
16 that anyone from Friends of Red Acre had made  
17 suggestions that they had been misled by TPL?

18 A In the summer or fall of '03, when things were  
19 unraveling, they felt they -- they had commented that  
20 they felt they had been misled.

21 Q And how had they been misled?

22 A Maybe a better term for *misled* would have been they  
23 felt that TPL hadn't fulfilled their obligation.

24 Q And isn't that true, because they were aware that TPL



1 had told certain people in the town, including the  
2 Board of Selectmen and Friend of Red Acre, that there  
3 was a six million dollar line of credit, but then TPL  
4 had subsequently refused to access it?

5 A My understanding is the Friends from Red Acre had been  
6 told that TPL could not follow through with the  
7 funding. The funding included all of the sources that  
8 you mentioned.

9 Q Including --

10 A We did not -- I don't recall specifically discussing  
11 then what about the line of credit.

12 Q But do you know if Friends of Red Acre did not know  
13 about the -- strike that.

14 Are you aware of whether TPL was aware of  
15 the six million dollar line of credit?

16 A TPL was, yes.

17 MS. ECKER: TPL?

18 Q I'm sorry. Friends of Red Acre.

19 A I am not aware that they knew of that. It would  
20 surprise me that they weren't as they were involved in  
21 what was happening and would have seen the process.

22 Q And would it also surprise you that their being upset  
23 with TPL revolved around the fact that TPL, having  
24 caused the Friends of Red Acre to raise tens of

1 thousands of dollars, was now refusing to access a  
2 line of credit which you certainly knew about?

3 MS. FETOUH: Objection.

4 A I think they were upset that TPL was not following  
5 through with the funding. I don't know whether it was  
6 specifically for accessing one set of funds or  
7 another. They were upset that it wasn't going  
8 forward.

9 Q Do you know if the funds raised by TPL, I'm sorry, do  
10 you know if the Friends of Red Acre had actually given  
11 funds to TPL.

12 A I believe they had.

13 Q And, in fact, the funds that went to Mrs. Kunelius  
14 were entirely from the Friends of Red Acre. Isn't  
15 that correct?

16 A That doesn't surprise me.

17 Q But do you know that that's in fact the case?

18 A When you say entirely from the Friends for Red Acre, I  
19 don't know. I believe they came from the Friends for  
20 Red Acre. Whether it was a hundred percent or not, I  
21 can't comment.

22 Q So, other than the money that was paid -- knowing  
23 that, isn't it in fact true that TPL had not one penny  
24 of money into the purchase of the property, because

1 one hundred percent of the \$15,000 received by  
2 Mrs. Kunelius came from donations of the Friends  
3 of Red Acre?

4 MS. FETOUH: Objection.

5 A I just said I don't know that it was a hundred percent  
6 from the Friends. I understood that it came from  
7 them. I do not know whether it included some TPL  
8 funds or not.

9 MR. McLAUGHLIN: All right. I have no  
10 further questions.

11 MR. CONROY: Before we break, can we  
12 just have one minute with you?

13 MS. ECKER: Okay.

14 (Recess, 5:41 P.M.)  
15

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VIA FACSIMILE

February 10, 2003

Mr. William J. Wrigley  
Town Administrator  
Stow Town Building  
380 Great Road  
Stow, Massachusetts 01775

Re: Kunelius Property - Purchase or Assignment of Chapter 61 Rights

Dear Bill:

This letter follows several phone conferences, e-mails and memos that you, Ross Perry, Greg Jones and I have exchanged over the last several weeks, both before and after Town Meeting action concerning the acquisition of the Kunelius land or certain rights therein. I will summarize where I think we are in terms of the terms and conditions to be incorporated in any assignment agreement that might be entered into with the Trust for Public Land (TPL) by the Board of Selectmen, as discussed or found in the various written correspondence exchanged.

1. M.G.L. c. 61, s. 8 requires that a right of first refusal be granted to the town by notice in the event of the sale or conversion of use of c. 61 lands and a 120 day period during which the town can either exercise the right, or to assign such right "to a nonprofit conservation organization under such terms and conditions as...the Board of Selectmen deem appropriate...for the purpose of maintaining the major portion of the property...in use as forest land." (quoting Section 8 language.) Section 8 also provides that a written notice to the landowner and to be recorded with the Registry of Deeds sets forth "the terms and conditions of such assignment."
2. Since the language of c. 61 does not absolve the Town of any further liability to the landowner for failure of the assignee to carry out the obligations to purchase the land under the assignment, or for any other claims as may be made by the landowner (such as exist in the present circumstances and are discussed below), appropriate terms and conditions for the assignment would include an indemnification agreement by the assignee (TPL) to the assignor (the Town) from any such claims as might be made by the landowner resulting from the assignment or its implementation and exercise by the assignee (TPL). I highly recommend such an indemnity clause be required for acceptance of the assignment of TPL in the present circumstances.
3. These circumstances include two potential sources of litigation and possible damage claims by the Seller (Kunelius) who provided the c. 61 Notice to the Town in the present matter. First, the Seller, through his attorney, is saying that no c. 61 notice was required in the

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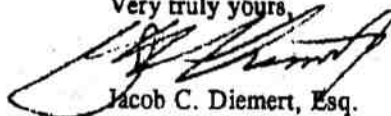
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Mr. William Wrigley  
February 10, 2003  
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proposed sale, because the use of the chapter land was not being sold or converted to a use other than forest land. Second, the Seller is saying that compliance with the terms of the Purchase and Sale Agreement, which was attached to the c. 61 Notice, include not only monetary compensation but a tax benefit to the Seller, all of which together constitute the benefit of the bargain with the intended Buyer.

4. While we may disagree with the Seller's contentions, made through Seller's counsel (the only party actually to opine on the issue of the c. 61 Notice given to the Town being TPL at the Special Town Meeting), the contentions contain the elements of causes of action that could result in a legal action, involving not only the possibility of damages being assessed, but the costs of defending any such action, which can be substantial whether the Town wins or loses.
5. Moreover, unless agreement can be reached both with TPL and the Seller prior to making the assignment over the Seller's claims, the assertion of one or more of these claims by a lawsuit is, in my judgment, highly likely given the various communications with counsel for the Seller. Of course, an alternative to an indemnification agreement from TPL to cover these two potential claims would be to have the Seller's agreement to the terms of the assignment prior to actually making the assignment, which agreement would presumably have to preserve what she views as the secondary benefit of the bargain (i.e. her gift of the c. 61 land to the Town), with negotiations with the Seller occurring before, not after, the assignment is made.
6. Another alternative to the indemnification by TPL would be an indemnity agreement or guarantee of any payment to be made or awarded to the Seller, by third parties, which could include individuals or other entities, recognizing a benefit to them to be gained by the assignment, and agreeing to waive any later defense based on lack of consideration for entering into such an agreement. Such an indemnity (or guaranty) by third parties should include an agreement to pay any and all monetary consideration as may be due as a result of claims by the Seller based on the original notice or assignment, including any amounts required of the assignee (TPL) to complete the purchase (purchase price stated plus any other successful claim to consideration for tax benefits lost), and any attorneys fees or legal costs to the Town as would be incurred in the defense of any legal claims, whether or not the Seller is ultimately successful.

In the event that it is possible to agree upon either an indemnification clause in the Town's proposed assignment to TPL, or some sort of third-party agreement, please let me know so that we can discuss the language for either. Please let me know if you have any questions or if I can be of further assistance before the February 11 meeting.

Very truly yours,



Jacob C. Diemert, Esq.  
Town Counsel

cc: Mr. Ross Perry (via facsimile)  
Mr. Greg Jones (via facsimile)

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